



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

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| <b>Case Reference</b>                | : | LON/00BK/LDC/2019/0094   |
| <b>Property</b>                      | : | 17 & 18 Brook Mews North,<br>29 & 31 Craven Road,<br>73, 75 & 77 Gloucester Terrace<br>N2 3DH      |
| <b>Applicant</b>                     | : | SEP Properties Limited   |
| <b>Representative</b>                | : | Alan Jenkins (Solicitor)   |
| <b>Respondent</b>                    | : | 28 residential lessees whose names are<br>annexed to this decision                                 |
| <b>Representative</b>                | : | Alan Black<br>James Innes-Smith  |
| <b>Type of Application</b>           | : | Dispensation with Consultation Requirements<br>under section 20ZA Landlord and Tenant Act<br>1985. |
| <b>Tribunal Members</b>              | : | Judge Robert Latham<br>Stephen Mason BSc FRICS FCI Arb   |
| <b>Date and venue of<br/>Hearing</b> | : | 17 July 2019<br>at 10 Alfred Place, London WC1E 7LR  |
| <b>Date of Decision</b>              | : | 19 July 2019   |

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**DECISION**

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(i) The Tribunal grants this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 on the conditions specified in paragraph 14 of this decision.

(ii) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that the Applicant may not pass on the legal costs of the hearing through the service charge.

(iii) The Tribunal determines that the Respondents shall pay the Applicant £300 in respect of the reimbursement of the tribunal fees paid by the Applicant. This sum should be charged to the service charge account.

### **The Application**

1. By an application made on 11 June 2019, the Applicant seeks dispensation with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”). The application relates to a block with 28 residential and 2 commercial units in a Grade II listed terrace property which has been converted into flats. The landlord described how the building has a bowing wall which could be in danger of imminent collapse. Due to the size and location of the wall, failure has the potential to put lives at risk. The application is brought by Blocsphere Property Management Limited who have recently been appointed by the Applicant to manage the block.
2. On 11 June 2019, the Tribunal gave Directions. On 21 June, the Applicant sent a copy of the application together with the Directions to the Respondents. Any tenant who opposed the application was required to complete a pro forma which was attached to the Directions and return it to the tribunal and send a copy to the Applicant. Three lessees completed a form opposing the application and two of them requested an oral hearing of the application:
  - (i) Mr Alan Black, Flat 3, 29-31 Craven Court; [alangblack@yahoo.com](mailto:alangblack@yahoo.com).
  - (ii) Mr James Innes-Smith, Flat 1, 29-31 Craven Court; [innes66@aol.com](mailto:innes66@aol.com);
  - (iii) Ms Alexis Gray, 17 & 18 Brook Mews North; [alexischgray@gmail.com](mailto:alexischgray@gmail.com).
3. These lessees complain that the application was premature and that the Applicant had failed to give them any sufficient information about the works. The description of the works in the application form was vague and the lessees had been given no sufficient information about the likely cost. The urgency of the works had not been justified.
4. On 9 July the Applicant filed a Bundle of Documents with the Tribunal. This should have been sent to the three lessees who opposed the application. They denied that they had received them.

### **The Hearing**

5. The Applicant was represented by Mr Alan Jenkins, a Solicitor with Excello Law. He was not accompanied by any representative from the managing agents. These applications for dispensation are intended to be informal. They should not increase the cost of the works. Mr Jenkins had limited instructions and the Tribunal needed to grant a short adjournment for Mr Jenkins to take instructions on the steps that the Applicant intended to take in consulting the lessees.

6. Mr Black and Mr Innes-Smith appeared in person. They had been provided with a copy of the Bundle. Mr Black stated that he had e-mailed a copy of his objection to Joy Davies at the managing agents. He produced a copy of the cover sheet. Mr Jenkins could not explain why this had not been received. Mr Jenkins stated that the Applicant had sent copies of the Bundle to Mr Innes-Smith and Ms Gray. He produced a copy of the envelopes franked with the date 8 Jul 2019. It was unclear why these had not been received by the lessees.
7. Mr Black had indicated that he would be seeking an adjournment. However, he was content for the Tribunal to proceed. There is no Residents Association.
8. On 21 May 2019, the City of Westminster (Westminster) had written to the previous managing agents noting that there was a cracked leaning brick wall at roof level which was liable to fall. The Applicant was required to remedy this. Were the situation to deteriorate, Westminster stated that it might be obliged to serve a Dangerous Structure notice. This caused the current managing agents to issue the current application. The Applicant had not notified the lessees of the proposed works. It would have been open to the Applicant to serve the Stage 1 Notice of Intention to do the Works.
9. On 26 June, the Applicant obtained a report from CBRE who are surveyors. This enclosed a report from HPM, dated 21 June, who are structural engineers. Both firms had inspected the block on 14 June. A section of chimney stack needs to be taken down in a series of stepped levels just above the adjacent roof finishes of Craven Court. The stack could either be recapped at a reduced height, or if required, rebuilt. CBRE stated that works need to be completed “in the short term and within 1 year at the latest”.
10. Mr Edwards stated that the Applicant were awaiting a heritage report from Westminster which should be available on 26 July. The Applicant intend to obtain estimates for the works from Standidge and Russell Cawberry, two firms of builders who are considered to be suitably qualified.

### **The Law**

11. The consultation requirements applicable in the present case are contained in Part 2 of Schedule 4 to the Service Charge (Consultation Requirements) (England) Regulations 2003. A summary of those requirements is set out in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854, the leading authority on dispensation:

Stage 1: Notice of Intention to do the Works: Notice must be given to each tenant and any tenants’ association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.

Stage 2: Estimates: The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.

Stage 3: Notices about Estimates: The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

Stage 4: Notification of reasons: Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.

12. 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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

### **Our Determination**

13. The only issue which this Tribunal is required to determine is whether or not it is reasonable to dispense with the statutory consultation requirements, and if so, whether to impose any conditions. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.** However, the statutory consultation procedures are part of the statutory armoury to protect lessees from paying excessive service charges.
14. On balance, the Tribunal is satisfied that it is appropriate to grant dispensation on terms. The Tribunal is willing to relax the timescales required by the consultation procedures, but expects the Applicant to comply with the spirit of the procedures. Dispensation is therefore granted on the following terms:

Stage 1: Notice of Intention to do the Works: **By no later than 2 August 2019**, the landlord shall give the lessees Notice of the proposed works, including a copy (or summary) of the reports from CRBE, HPM and the heritage report. If a summary is provided, the landlord is to provide copies of the reports on request. The Notice shall specify where and when observations and nominations for possible contractors should be sent, allowing **at least 14 days**. The landlord shall also arrange a meeting with lessees to discuss the proposed works within that period of 14 days. The landlord must have regard to those observations.

Stage 2: Estimates: The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.

Stage 3: Notices about Estimates: The landlord must issue a statement to tenants, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when

observations can be sent, allowing at **least 7 days**. The landlord must have regard to such observations.

Stage 4: Notification of reasons: Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, **within 7 days of contracting**, give a statement to each lessee of its reasons, or specifying where and when such a statement may be inspected.

Mr Black and Mr Innes-Smith stated that they were willing for any correspondence to be sent by e-mail. They are willing to coordinate any response on behalf of the lessees. The managing agents are to consider whether they can also notify lessees of the consultation procedure through their website.

### **Application under s.20C and Refund of Fees**

15. At the hearing, Mr Black and Mr Innes Smith applied for an order under section 20C of the 1985 Act so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. The Tribunal is satisfied that there is some justification in the lessee's argument that the application was premature and that the Applicant failed to give them any sufficient information about the works. The description of the works in the application form was vague. It is apparent that the works are less urgent than was indicated. The Applicant has not sought to follow the spirit of the consultation requirements; it could have served a Notice of Intention. The Tribunal is satisfied that it was not necessary for the Respondent to be legally represented at the hearing. Any application for dispensation should not unnecessarily add to the cost of urgent works. In the circumstances, the Tribunal determines that the Applicant should not pass on the legal costs of the hearing through the service charge. Mr Evans advised that his costs were £1,000 plus VAT.
16. At the end of the hearing, the Applicant made an application for a refund of the fees of £300 that it has paid in respect of the application pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Tribunal determines that the Applicant should be entitled to recover these fees from all the lessees through the service charge. On balance, we are satisfied that the application was justified.

### **Notification of this Decision**

17. The Tribunal directs the Applicant to send a copy of this decision to all lessees. In addition, the Tribunal will send a copy of the decision to the three lessees who have opposed the application. The Applicant should also, if possible, place a copy of this decision on its website.

**Judge Robert Latham,  
19 July 2019**

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).