



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

<b>Case Reference</b>	:	LON/00BK/LDC/2019/0075
<b>Property</b>	:	Princes Court, 78-94 (even) Brompton Road, London, SW3 1 ES
<b>Applicant</b>	:	Novel Property Investments Ltd Itemtrump Ltd
<b>Representative</b>	:	Jonathan Upton (Counsel)
<b>Respondent</b>	:	The 90 residential lessees whose names are annexed to this decision
<b>Representative</b>	:	Sol Unsorfer (Agent for Prices Court Leaseholders Association)
<b>Type of Application</b>	:	Dispensation with Consultation Requirements under section 20ZA Landlord and Tenant Act 1985.
<b>Tribunal Members</b>	:	Judge Robert Latham Kevin Ridgeway MRICS
<b>Date and venue of Hearing</b>	:	31 July 2019 at 10 Alfred Place, London WC1E 7LR
<b>Date of Decision</b>	:	9 August 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 without conditions.

(ii) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 in favour of the Respondents.

(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 9 May 2019, the Applicants seek dispensation with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”). Princes Court is a large prominent mansion block dating from c.1930 being a mixed property comprising 9 retail premises on the ground and first floors and 90 residential flats on the second to ninth floors. There is a plan of the Building at p.77.
2. Novel Property Investments Ltd are the freehold owners, whilst Itemtrump Ltd is the head lessor. Since 2013, the building has been managed by Sandrove, Brahams & Associates Ltd (“SBA”). The application was supported by a witness statement from Timothy Darwall-Smith who is a director of SBA. The statement attaches a number of exhibits.
3. In September 2018, the Applicants started a programme of major works to the exterior of the building. During the course of the works, the Applicants have identified the need for additional works which will increase the cost of the works from £1.33m to £2.28m.
4. On 15 May 2019, the Tribunal issued Directions. By 31 May, the Applicant was required to send each leaseholder and the Residents Association a copy of the application, the witness statement of Mr Darwall-Smith (without the exhibits) and the Directions. By 21 July, leaseholders were required to complete a form indicating whether they supported or opposed the application.
5. On 19 July, Mr Sol Unsdorfer FIRPM served a statement on behalf of the Prices Court Leaseholders Association (“PCLA”) opposing the application (at p.325-6). The PCLA represent some 80 out of the 90 leaseholders. On 24 July, Mr Darwall-Smith made a second witness statement dealing with the issues raised by My Unsdorfer.

### **The Hearing**

6. The Applicants were represented by Mr Jonathan Upton (Counsel) who was accompanied by Mario Betts from his instructing Solicitors (Lewis Silkin). He provided a Skeleton Argument. He adduced evidence from Mr Darwall-Smith and Mr Owen Pottle, a building surveyor with Trident Building Consultancy (“Trident”). Mr Unsdorfer asked that they both give evidence at the same time, so that the relevant person could respond to any question. Mr Edipidis, an employee of the Applicants, was also present.
7. Mr Unsdorfer appeared on behalf of the PCLA. He was accompanied by Mr Richard Grove, a chartered surveyor with Calfordseaden LLP. Mr Grove has

provided a witness statement (at p.329-337). Mr Unsdorfer tendered Mr Grove for cross-examination. However, Mr Upton stated that he had no questions as he did not consider Mr Grove's evidence to be relevant to the matters which the Tribunal is required to consider.

### **The Law**

8. 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* (“*Daejan*”) [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.

9. 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.”

### **The Background**

10. There is a complex history to this dispute. Much of this is irrelevant as 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.

11. Mr Unsdorfer complained of historic neglect. He suggests that the leaseholders are now being required to pay four times the cost of the works which could and should have been completed in 2016.
12. Mr Darwall-Smith related how major works were originally planned to take place in 2015/6. Statutory notices were served. However, for a number of reasons relating to timing, the increased costs and scope of the work and representations from the PCLA a decision was taken to start afresh. In April 2017, the landlord instructed Mr Pottle to review the project, update the specification and retender the works. The Applicants agreed to consult with Mr Grove to ensure that due regard was had to the views of the PCLA
13. On 26 January 2018 (at p. 78) the Applicants served a Stage 1 Notice of Intention. No leaseholder nor the PCLA made written representations.
14. On 5 March 2018, Mr Pottle and Mr Grove met on site to review the scope of the Specification. Mr Grove argued that a number of items should be removed, reducing the cost of the works by some £400k. On 24 May, the two experts agreed a revised Specification and tenders were invited. On 2 July, tenders were received from five contractors. Bourne Construction and Refurbishment Limited ("Bourne") provided the lowest estimate in the sum of £1,321,701. Trident prepared a tender report (at p.149-186).
15. On 20 July 2018, the Applicants served the Stage 3 Notice about Estimates (at p.187-193). No leaseholder nor the PCLA made written representations. On 28 August, the Applicants notified the leaseholders of the decision to proceed with Bourne. On 31 August, the Applicants entered into a formal contract with Bourne. The works started shortly thereafter.
16. In early 2018, the Applicants instructed Mr Jon Rowland, a surveyor at Tuffin Taylor LLP, to inspect and report on the condition of the building. In his report, dated 9 February 2018, he identified a risk of masonry falling on members of the public. He recommended the construction of a scaffold gantry to the Brompton Road elevation of the building. On about 21 May 2018, the gantry was erected. On 30 May 2018, the Applicants made their first dispensation application (LON/00BK/LDC/2018/0097). The PCLA responded to the application stating that to the extent that the deteriorated state of the building represented a present danger, they would not stand in the way of immediate protective measures. They set out their concerns about historic neglect and the cost of the works. On 9 July 2018 (at p.232-8), the Tribunal granted dispensation.
17. Between October 2018 and January 2019, following the erection of the first phase of scaffolding around the building, Trident undertook a series of close-range inspections of the Building façade. It was apparent that significant additional works are required. The additional works are discussed in Section 6 of in a report prepared by Trident, dated 3 May 2019 (at p.247-324). The estimated construction costs, without the gantry erection and back-propping provision, has increased from £1,331,701 to £2,284,000.
18. On 14 March 2019 (at p.239-246) the Applicants served a Stage 1 Notice of Intention to do the Additional Works. The proposed variations are described. In addition, the Notice stated that the landlord had obtained an estimate for the

additional works from Bourne. The estimated cost of the works, including fees and VAT, is £1,513,628 of which the leaseholder's contribution would be 80%. The landlord stated that it would be more cost effective to carry out these works as a variation to the existing contract rather than a separate set of works at a later date. Written observations were invited by 17 April.

19. Mr Upton stated that neither PCLA nor any leaseholder had made written representations. Mr Unsdorfer suggested that a response had been made. However, he was unable to produce it and it was no part of PCLA's written submission to this application. Mr Unsdorfer could do no more than produce a letter from Mr Grove, dated 29 April (at p.347) which referred to an e-mail from Mr Darwall-Smith, dated 12 April 2019.

### **The Submissions of the Parties**

20. Mr Upton (for the Applicants) accepts that for the purpose of this application (but not otherwise), the proposed additional works are beyond the scope of the works upon which leaseholders have already been consulted. It had not been possible to identify the need for these additional works at an earlier stage. Mr Pottle and Mr Grove are agreed that these additional works are required. It would be significantly more cost effective to carry out the proposed additional works under the existing contract with Bourne rather than carry out a further competitive tendering exercise. Bourne have already shown themselves to be competitive through two competitive tendering exercises. The Applicants have not only served the Stage 1 Notice of Intention to do the Additional Works, but has also informed them of their intention to use Bourne. Leaseholders and the PCLA were invited to make written representations on the proposed course of action. None has taken the opportunity to do so.
21. Mr Upton took us through the judgment of the Supreme Court in *Daejan* which he summarises at [11] of his Skeleton. He highlighted [42] and [58] of the judgement of Lord Neuberger of Abbotsbury PSC.
22. Mr Unsdorfer highlighted the leaseholder's complaints of historic neglect. He referred us to a concrete inspection Report dated June 2012 (at p.350). He suggests that to grant dispensation would give the Applicants an open cheque book to draw on the tenants' service charge account. The Tribunal stressed to Mr Unsdorfer that this application for dispensation does not concern the issue of whether any service charge costs will be reasonable or payable.
23. Mr Unsdorfer referred to a Site Meeting on 12 July 2019 (at p.370-4) at which it was agreed that there should be an analysis of the costs of stopping the works at the completion of Section 4 and re-instructing the rear and west elevations under a separate contract. Mr Darwall-Smith addressed this in his second witness statement. First, this would put the Applicants in breach of their contract with Bourne which could give rise to a claim for damages. Secondly, it would be necessary to dismantle the existing scaffolding and re-erecting new scaffolding. He had estimated this at c.£200,000. A more detailed analysis had put the additional cost at £226,000. Mr Darwall-Smith stated that it would be "commercial nonsense to terminate the contract with Bourne".

24. Mr Unsdorfer raised a number of further matters which seem to have little relevance to the current application for dispensation. First, he complains that the Applicants entered into the original contract with Bourne prematurely without securing the relevant licenses and scaffolding permits in advance. On 6 March 2018 (at p.334), Mr Grove emphasised the need to agree scaffolding licences with Harrods. Mr Darwall-Smith responds that the Applicants entered into negotiations with Harrods in March 2018, some 6 months before the building contract was signed with Bourne and 10 months before the proposed date for the commencement of scaffolding to the north elevation of the Building. Heads of Terms have now been agreed. Mr Darwall-Smith rejected the suggestion that with the benefit of hindsight Harrods could have been handled better. He denied that additional costs had been incurred by this delay. It was now hoped to complete the contract by 24 January 2020, an extension of some 26 weeks.
25. Mr Unsdorfer suggested that works had ground to a halt. Mr Darwall-Smith disputed this. There are currently between 10 and 30 people working on site.
26. Mr Unsdorfer referred us to the original Specification, dated May 2017 (at p.81-123). He queried why scaffolding was to be provided by Benchmark Scaffolding. Mr Darwall-Smith responded that they had erected the gantries and that they had been satisfied with the tenders which had used Benchmark Scaffolding. Mr Unsdorfer suggested that the gantries had been erected for an ulterior motive, namely to generate advertising revenue. Mr Darwall-Smith disputed this; it was a health and safety issue. Mr Unsdorfer referred us to the Revised Specification (at p.269) and the increase in scaffolding costs from £490k to £1,178m. Mr Darwall-Smith responded that part of the increased cost was the gantry.
27. The Tribunal has had regard to the witness statement of Mr Grove (at p.329-337). We agree with Mr Upton that this is not relevant to the issues that we are asked to determine.

### **Our Determination**

28. The only issue which this Tribunal is required to determine is whether or not it is reasonable to dispense with later stages of 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.
29. We are satisfied that this is a clear case where dispensation should be granted without condition. The Applicants have followed the spirit of the statutory consultation requirements. The Applicants have not only served the Stage 1 Notice of Intention to do the Additional Works, but have also informed the leaseholders of their intention to use Bourne and the additional cost that is likely to be occasioned. Leaseholders and the PCLA were invited to make written representations on the proposed course of action. None has taken the opportunity to do so.
30. The additional statutory requirement would be for the Applicants to seek further tenders for the additional works, rather than instruct Bourne. The Applicants have specified two cogent reasons for not doing so:

(i) This would put the Applicants in breach of their contract with Bourne which could give rise to a claim for damages.

(ii) It would be necessary to dismantle the existing scaffolding and re-erecting new scaffolding. The additional cost has been estimated at £226,000.

We agree with Mr Darwall-Smith that it would be commercial nonsense to terminate the contract with Bourne.

31. We regret that most of the submissions made by Mr Unsdorfer on behalf of the PCLA have nothing to do with the application for determination which we are required to determine. We are not concerned with the cost of the works or the arguments of historic neglect. A major works contract is underway. Additional works are agreed to be necessary. To insist on a further round of tendering would merely increase costs and delay the project.

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

32. In their Statement, the Respondents represented by the PCLA seek an order under section 20C of the 1985 Act so that the Applicants 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 this application has been properly made and that the costs occasioned by it would be a proper service charge expense.
33. At the end of the hearing, the Applicants 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 Applicants should be entitled to recover these fees from all the lessees through the service charge.

**Judge Robert Latham,  
9 August 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).