



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

Case reference : **LON/00AP/LDC/2019/0127**

Property : **266 Alexandra Park Road London
N22 7BG**

Applicant : **Alexandra Park Management Ltd**

Representative : **Martyn Gerrard**

Respondents : **Emma Louise Dagnes & Charles
Daw (Flat 1)
Anthony Leon Philip Rabin &
Sheila Rabin (Flat 2)
Marios Georgiou (Flat 3)
Jason Hill (Flat 4)**

Type of application : **An application for dispensation
from the consultation
requirements of s.20 Landlord and
Tenant Act 1985**

Tribunal member : **(1) Tribunal Judge D Brandler
(2) Hugh Geddes, Professional
Member**

**Date and venue of
hearing** : **N/A**

Date of decision : **23 September 2019**

DECISION

Decision

1. The tribunal refuses the applicant dispensation from the statutory consultation requirements in respect of works required to 266 Alexandra Park Road, London N22 7BG ("The Building").
2. The tribunal makes no order under section 20C of the Landlord and Tenant Act 1985.

Background

3. The building comprises 4 leasehold flats. The freehold interest is owned by the leaseholders themselves under the umbrella of Alexandra Park Management Ltd ("The Freeholder"). The leaseholders are directors of that company.
4. The freeholder has appointed Martyn Gerrard, 197 Ballards Lane, London N3 1LP as managing agents.
5. On 8th August 2019 an application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord & Tenant Act 1985 for remedial works to be carried out on the building.
6. The reasons and explanation given for the urgency of the application are that
 - (i) "The building is in a bad state and not watertight. Parts of the building are collapsing" (p.5);
 - (ii) "works to repair the roofs, render, lintes, windows, retaining walls" (sic) (p.8)
 - (iii) "urgently needed as building is dangerous" (p.8)
7. The description of the consultation that has been carried out or is proposed to be carried is that "a full survey has been done. 3 quotes have been obtained. Numerous inspections have been done. Meetings with all 4 tenants have taken place". Although only two quotations appear to have been included in the appeal bundle.
8. On 16th August 2019 directions were issued which included a direction for the service of documents to the leaseholders.
9. The managing agents provided the following documentation:
 - (i) a copy of the lease for flat 4 of the building only
 - (ii) An undated letter from Carly Charles of the managing agents to the Building stating that all the leaseholders have to agree to this application
 - (iii) a document signed by only three of the leaseholders (flats 1,3,4) on different dates confirming their agreement to make a unanimous application together with those leaseholders' letters of confirmation to this action.

- (iv) Estimates for works from OCD FM and CAD Maintenance
- (iv) A survey report prepared by MBC Designs on or around 1st April 2019

10. Absent from the appeal bundle was any documentation to show that the leaseholder in flat 2 had been informed of this application, or evidence of any application having been displayed within the communal area of the building. Although the application is stated to be unanimous, flat 2 does not appear to play a part.
11. On 9th September 2019 the Tribunal wrote to the managing agents to ask why the directions had not been complied with in relation to provision of a bundle. That bundle had been directed to be filed and served by 6th September 2019.
12. The Managing agents responded on the same day asking what documents were required, confirming that no one had opposed the application.
13. In response, after a judge had considered the correspondence, the Tribunal wrote to the managing agents on 10th September 2019 confirming that a determination under s.20ZA will only be made if it is satisfied that it is reasonable to dispense with the statutory requirements, and that this is not a rubber stamping exercise, even if all the leaseholders consent.

The Leaseholders' case

14. No objection has been received from flat 2. The other leaseholders consent. However, there is no evidence that Flat 2 has been made aware of this application.

Reasons for the decision

15. The leading authority in relation to s.20ZA dispensation requests is *Daejan Investments Ltd v Benson* [2013] 1 WLR 854 (“Benson”) in which the Supreme Court set out guidance as to the approach to be taken by a tribunal when considering such applications. This was to focus on the extent, if any, to which the lessees were prejudiced in either paying for inappropriate works or paying more than would be appropriate, because of the failure of the landlord to comply with the consultation requirements. In his judgment, Lord Neuberger said as follows;

44. Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements.

45. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the Requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be – ie as if the Requirements had been complied with.
16. However, there are two difficulties faced by the Tribunal in this application.
17. Firstly, one of the leaseholders, flat 2, remains silent. Not only is he silent, but the managing agents have provided no evidence of his involvement in meetings, or even whether he had been served with the application. There is no evidence of pinning the application up in the common areas and no evidence that he is aware of this application. In contrast the application suggests that this is a unanimous decision of all 4 flats. The Tribunal had great difficulty with these inconsistencies.
18. Secondly, the survey report does not support the claims made in the application.
19. The survey which is based on a visual inspection of the property on Monday 1st April 2019 provides no evidence that the repairs required are so urgent that they would pose a danger to the leaseholders or to the building such that dispensation is required. They certainly do not reflect statements that the work is “urgently needed as building is dangerous” or that “parts of the building are collapsing”. (p5 & p.8)
20. Having considered the recommendations and the repair priority, the Tribunal are not satisfied that it is reasonable to dispense with the statutory consultation requirements.
21. This is not a rubberstamping exercise to circumvent the statutory provisions of s.20 Landlord & Tenant Act 1985. Permission is refused.
22. The tribunal makes no order under section 20C of the Landlord and Tenant Act 1985 because it appears that the majority of the leaseholders were in agreement with this application.

D. Brandler

**Tribunal Judge D
Brandler**

23 September 2019

APPENDIX 1
RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

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APPENDIX 2
RELEVANT LEGISLATION

Landlord and Tenant Act 1985

20ZA. Consultation requirements: supplementary

- (1) 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.