



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

Case reference : **LON/00AX/LDC/2019/0184**

Property : **Carrington Court, 39 Kingston Road, New Malden, Surrey, KT3 3PE**

Applicant : **Kingston Road (New Malden) Management Company Ltd**

Representative : **Gem Estate Management Ltd, Managing Agent**

Respondents : **The leaseholders**

Representative : **N/A**

Type of application : **For dispensation under section 20ZA of the Landlord & Tenant Act 1985**

Tribunal member : **Tribunal Judge I Mohabir**

Date and venue of determination : **25 November 2019
10 Alfred Place, London WC1E 7LR**

Date of decision : **25 November 2019**

DECISION

Introduction

1. The Applicant makes an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for dispensation from the consultation requirements imposed by section 20 of the Act.
2. Carrington Court, 39 Kingston Road, New Malden, Surrey, KT3 3PE (“the property”) is described as a purpose-built block of flats comprised of 14 flats and a single communal stairwell. Under the terms of the residential leases, the lessees are required to pay a service charge contribution in respect of the “Maintenance Expenses” set out in the Sixth Schedule, which includes the inspecting, maintaining, renewing, reinstating and replacing the fire protection system(s) of the building.
3. An annual servicing visit found an intermittent fault with the power supply unit of the automatic opening vent for the smoke system. Two quotes were obtained to replace the defective power unit. The manufacture, shipping and installation of the unit would take approximately 7 weeks in total. The Applicant was of the view that the additional time of approximately 3 months taken to carry out statutory consultation with the leaseholders would have a negative impact on the health and safety of the residents and visitors to the property.
4. On 10 October 2019, the Applicant served the Respondents with a Notice of Intention together with a covering letter informing them of the need to carry out the proposed work and the estimates obtained. Apparently, the cost of the work will be met from the Reserve Fund.
5. On 9 October 2019, the Applicant made this application seeking dispensation from the requirement to carry out statutory consultation under section 20 of the Act for the reasons set out in paragraph 3 above.
6. On 24 October 2019, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. A copy of the application was served on each of the lessees on 28 and 29 October 2019. The Tribunal also directed that this application be determined on the basis of written representations only.
7. No Respondent has filed any objection to the application.

Relevant Law

8. This is set out in the Appendix annexed hereto.

Decision

9. The determination of the application took place on 25 November 2019 without an oral hearing. It was based solely on the statement of case

and other documentary evidence filed by the Applicant. No evidence was filed by any of the Respondents.

10. The relevant test to be applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.
11. The issue before the Tribunal was whether dispensation should be granted in relation to requirement to carry out statutory consultation with the leaseholders regarding the defective power supply unit of the automatic opening vent for the smoke system. It should be noted that the Tribunal is not concerned about the actual cost that has or will be incurred, as that is not within the scope of this application.
12. The Tribunal granted the application the following reasons:
 - (a) the fact that each of the leaseholders has been kept informed of the defective power supply unit of the automatic opening vent for the smoke system and the requirement to carry out the replacement.
 - (b) the fact that each of the leaseholders had been served with a copy of the application and documents in support.
 - (c) no leaseholder has objected to the application.
 - (d) the Tribunal accepted the Applicant's contention that the defective opening vent for the smoke system posed an immediate health and safety risk to the lessees and any visitors to the property, which had to be addressed immediately. This would not occur if the Applicant was required to carry out statutory consultation.
 - (e) importantly, any prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred.
13. The Tribunal, therefore, concluded that the Respondents would not be prejudiced by the failure to consult by the Applicant and the application was granted as sought.
14. It should be noted that in granting this part of the application, the Tribunal makes no finding that the scope and estimated cost of the repairs are reasonable. It is open to any of the Respondents to later challenge those matters by making an application under section 27A of the Act in the event that this becomes necessary.

Name: Tribunal Judge I
Mohabir

Date: 25 November 2019

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

(1) Where an application is made to a leasehold valuation 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.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises.