



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

Case reference : **LON/00AY/LDC/2020/0192**

HMCTS code (paper, video, audio) : **P: PAPER REMOTE**

Property : **Beregaria Court, 190 Kennington Park Road, London, SE11 4BT**

Applicant : **Kennington Park Road (K Point) Management Company Limited**

Representative : **Anthony Hawkins, Management Company Services Ltd**

Respondent : **The 28 leaseholders at Beregaria Court**

Representative : **Renee Clarke, Network Homes**

Type of application : **Dispensation with Consultation Requirements under section 20ZA Landlord and Tenant Act 1985**

Tribunal member : **Judge Robert Latham**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **14 December 2020**

DECISION

The Tribunal grants this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 in respect of the waking watch service that has been introduced and for the provision of an integrated fire alarm system.

Covid-19 pandemic: description of hearing

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was P:PAPER REMOTE. The Directions provided for the application to be determined on the papers unless any party requested a hearing. No party has requested a hearing. The applicant has filed a bundle in 11 attachments which extend to 165 pages. This includes the written representations from Network Homes. No responses have been received from any of the other respondents. Network Homes have provided a copy of a sub-lease.

The Application

1. On 28 October 2020, the tribunal received an application seeking dispensation from the consultation requirements of section 20 of the Landlord and Tenant Act 1985 (“the Act”). The Applicant was specified as Anthony Hawkins, an employee of Management Company Services Ltd (“MCS”), the managing agents for Beregaria Court; the respondent as “Kennington Park Road (K Point) Management Company Limited”, the management company. The qualifying works in respect of which dispensation is sought is described as follows:

“A waking watch has been put in place by the residents management company due to the fire risk to the building due to the combustibility of the external cladding, insulation and timber frame. This service was put in place on Wednesday 21st October 2020 on the recommendation of the fire engineer who reported on the building. This was also recommended by the London fire brigade. The waking watch will continue until a fire alarm system is installed to comply with British Standard 5839-1 for a category L5 system.”

2. On 17 November, the Tribunal issued Directions. The Procedural judge identified that the applicant should be Kennington Park Road (K Point) Management Company Limited (“the applicant”) and that the respondents should be the 28 leaseholders at Beregaria Court. The Tribunal stated that it would determine the application on the papers, unless any party requested an oral hearing. By 23 November 2020, the applicant was directed to send to each of the leaseholders by email, hand delivery or first-class post, copies of the application form (excluding any list of respondents’ names and addresses) and a copy of the directions. The applicant was further directed to display a copy of both in a prominent place in the common parts of the Property.
3. On 24 November, the applicant confirmed to the Tribunal that it had taken the following steps to comply with these Directions:

(i) On 20 November, the applicant sent this material by post where the leaseholder is a landlord;

(ii) On 21 November, the applicant hand delivered the material to those leaseholders who live onsite.

(iii) The applicant has displayed the material in the common parts of the block.

4. By 4 December, any leaseholder who opposed the application was directed to complete a Reply Form which was attached to the Directions and email it both to the Tribunal and to the applicant. The leaseholder was further directed to send the applicant a statement in response to the application. No leaseholder has returned a completed Reply Form. No party requested an oral hearing.

5. On 4 December, Network Homes sent written submissions to the Tribunal. Network Homes is the intermediary landlord in respect of Flats 1, 2, 3, 4, 5, 6, 8, 9, 10 and 28. Network Homes state that on 4 November, it had asked the applicant to confirm that the consultation documentation had been served on its sub-tenants. On 6 November, the applicant had confirmed that it had only served Network Homes and not its sub-tenants. Its response to the application was that:

“NH does not object to the dispensation application being allowed, as long as the following points are agreed and form part of the Tribunal’s decision:

- That the Tribunal clarifies whether the dispensation is limited to just the waking watch or just the fire Alarm, or both see our further comments below
- That NH reserves the right to dispute the reasonableness of the cost at a later date, due to NH not being able to nominate a contractor or review the proposals to ascertain if the work and cost thereof is reasonable
- That the Dispensation also applies to the sub-tenants of the above-mentioned flats and that NH can recover the cost incurred for the works for which Dispensation is granted from the sub-tenants without further consultation
- That the Applicant bears their legal cost incurred in respect of this Application including the legal cost incurred in the preparation of the application i.e. legal advice etc. See reasons below.”

6. In the light of this response, the Tribunal set the matter down for a Case Management Hearing and directed both the applicant and Network Homes to attend. The Tribunal informed the parties that it needed to clarify the following issues:

(i) whether the application relates to (a) the waking watch service; and/or (b) the installation of the fire alarm.

(ii) whether the waking watch service constitute “qualifying works” for the purpose of section 20 of the Act 1985.

(iii) whether the applicants had served the Network Homes sub-tenants (see *Foundling Court & O'Donnell Court v Camden LBC [2016] UKUT 366 (LC)*).

7. The Tribunal directed the applicant to email to the tribunal and Network Homes a statement giving full particulars of the nature of the relief that is sought and address the issues raised by Network Homes. The statement should also address the following: (i) what are the relevant “qualifying works”? (ii) what is the cost of the same which is to be passed on to the lessees? (iii) what steps has the applicant taken to obtain quotations for the works? (iv) what consultation has there been about the proposed works?”
8. On 18 December, the applicant filed a statement of case and a number of documents. The applicant confirmed that its application related to both the waking watch and the provision of an integrated fire alarm system. The application had been served on the Network Homes sub-tenants. The applicant asserted that both the waking watch and integrated fire alarm are qualifying work under section 20 of the Act. The cost of the integrated fire alarm is £32,383.50 plus VAT and the cost of the waking watch up to the 31st of January is £73,267.20 including VAT. The substantive remediation cost will form part of another section 20 application.
9. A telephone Case Management Hearing was held today. The applicant was represented by Mr Anthony Hawkins, from MSC. He was accompanied by Mr Ashley Painter, a director of the applicant. Network Homes were represented by Mr Warren Shackleton, an In-house Solicitor. He was accompanied by Ms Renee Clarke, its Leasehold Services Manager and Ms Nicoy Musarurwa, its Property Manager. Network Homes provided a copy of the sublease for Flat 10. The parties were content for the Tribunal to determine the application on the papers.

The Background

10. Beregaria Court is a purpose block of 28 flats consisting of one and two bedroom flats. It was constructed between 2006 and 2007 and has four storeys. It has a timber frame construction with intermediate timber floors. The external wall construction is masonry up to first floor level and cladding to all other parts of the façade with HPL panels. The block is less than 18 meters high. It does not therefore qualify for any

government assistance under the current post-Grenfell fire precaution schemes.

11. The applicant has provided the Tribunal with a copy of the lease for Flat 11 (Plot 14) dated 24 October 2008. There are currently three parties to the lease: (i) Freeholder: Aviva Investors Ground Rent GLP Limited & Aviva Investors Ground Rent HOLDCO Limited; (ii) Management Company: Kennington Park Road (K Point) Management Company Limited; and (iii) the lessees.
12. Network Homes are intermediate landlord in respect of Flats 1, 2, 3, 4, 5, 6, 8, 9, 10 and 28. It is a Registered Social Landlord. Mr Shackleton confirmed that all the sub-lessees currently reside in their flats. Network Homes provided a copy of the sub-lease for Flat 10. Some of its sub-tenants occupy under “shared ownership” scheme and are required to occupy their flats. Others sub-tenants hold 100% of the equity. The sub-tenancies mirror the provisions in the head leases.
13. All the leaseholders hold a share in the applicant management company. Network Homes holds the shares in respect of its flats. Leaseholders are appointed as directors to manage the management company. Mr Painter is one such director.
14. In the aftermath of the Grenfell Fire tragedy, leaseholders have found that they have been unable to sell their flats. They have been unable to secure the requisite “EWS1 certificate”. On 19 October 2020, the applicant obtained a report from Urban Change. It only assessed a “B2 fire rating”. Unless a waking watch was instituted by 21 October, the London Fire Brigade (“LFB”) was highly likely to order the building uninhabitable.
15. On 22 October, the LFB inspected the building. The applicant has provided a copy of their email, dated 23 October 2020. The waking watch will be required until the fire alarm is installed and other interim remediation works are completed. This will be again assessed by LFB.
16. On 21 October, the applicant obtained two quotes for the provision of the waking watch to begin at 18:00 on 21 October 2020 from Star Protection Services and Triton Security Services. They were both at a similar cost, namely £13 and £12.80 + VAT per hour. Two officers are required, 24 hours a day. The applicant has instructed Triton Security Services. On 3 November, the applicant negotiated a fee reduction to £12 per hour. The service can be determined on 24 hours’ notice. The cost of the service is extremely high, namely £576 per day (+ VAT), or £4,838 per week (inc VAT).
17. The applicant has also obtained two quotes from A1 Fire Protection Ltd (A1) (£32,388.50 + VAT) and Aylesbury Fire Systems Ltd (AFS)

(£57,280.00 + VAT) for the provision of the integrated fire alarm. Two Both these quotes were assessed by UC for compliance with BS 5839 Part 1 Level 5. The preferred quote was A1, having regard to price, compliance and speed of installation.

18. The applicant has arranged informal consultations at fortnightly residents zoom meetings and otherwise including subtenants of Network Homes. The first meeting was held on 25 October. All tenants and Network Homes subtenants (apart from Flats 4 and 9 who are absent) have expressed support for the applicants' approach. On 10 November, nine residents attended fire warden and evacuation management training. The current run rate for the waking watch compares of £20,000 per month with the cost for the integrated fire alarm total of £40,000.
19. The applicant recognises that speed is of the essence for economic and safety benefit of all residents. It is hoped that the integrated fire alarm system will be installed before Christmas.
20. The applicant confirmed that when it had hand delivered the material to the leaseholders, this included the sub-tenants of Network Homes. It included the letters, dated 20 November which have been delivered to "the leaseholder/sub-tenant" of Flats 1, 2, 3, 4, 5, 6, 8, 9, 10 and 28. The applicant states that on 20 November, it had also emailed this material to Network Homes. The Tribunal accepts that neither the covering letter or the enclosed documents clarified the nature of the application.
21. The applicant states that it did not have the names and addresses of the sub-tenants of Network Homes. It had requested this information by letters dated 6, 8 and 27 November. Network Homes responded that it had not received the requisite consents from its sub-tenants to share this confidential information. Network Homes has now provided the names and telephone numbers of its sub-tenants. At the CMH, it agreed to provide their addresses and email addresses (if available).
22. On 26 October, the applicant sent its application to the Tribunal. It also served a section 20 "Notice of Intention". This only related to the communal fire alarm system. The letter made no reference to the application which had been issued. This Notice was only served on the leaseholders and Network Homes. It was not served on the Network Home sub-tenants. Mr Shackleton explained that the Notice had been served as the applicant was not sure of the timescale within which the Tribunal would determine its application. The Notice did not refer to the waking watch as this service had already been put in place. Responses were required by 27 November. There had been no opposition to the proposal.
23. Mr Shackleton stated that the applicant had no option but to pass on the cost of these works through the service charge. The applicant has

sought government assistance, but these works are not covered by any of the current scheme. Network Homes have yet to decide whether it will charge the full cost of the works to its sub-tenants.

The Law

24. 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.**
25. Section 20ZA (2) of the Act defines (i) “qualifying works” as “works on a building or any other premises”; and (ii) “a qualifying long-term agreement” as “an agreement entered into, by or on behalf of a landlord or a superior landlord, for a term of more than twelve months”. The waking watch service is an agreement for less than 12 months. Neither party made submissions on whether the service constitutes “works on a building or any other premises”. In the absence of such argument, it would not be appropriate for the Tribunal to make a ruling on this point.
26. A landlord may make an application under section 20ZA (1) to dispense with some or all of the consultation requirements and the Tribunal may make the determination if satisfied that it is reasonable. The Supreme Court decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854 is the leading authority on dispensation. In summary, the burden rests on a leaseholder to establish that real prejudice would arise from the landlord's failure to comply with the statutory consultation requirements. If such prejudice is established, dispensation may be refused or conditions may be imposed.

The Tribunal's Decision

27. The statutory duty to consult is an important weapon in the statutory armoury to protect leaseholders from being required to pay unreasonable service charges. The prescribed procedures are not intended to act as an impediment when urgent works are required. A strict adherence to the statutory timetable would delay urgent works required to protect the health and safety of residents. In such circumstances, it is important for landlords to follow the spirit of the statutory provisions.
28. The Tribunal is satisfied that it is reasonable to grant dispensation from the consultation requirements in this case without condition. The Tribunal has been concerned about the lack of clarity in the correspondence about the nature of the works; the steps taken to ensure that competitive prices have been obtained; and the costs to be passed on through the service charge. However, the Tribunal notes that there have been regular zoom meetings at which all leaseholders have been able to engage. No leaseholder has opposed this application.

29. Mr Shackleton stated that the position of Network Homes is now “neutral”. Its concern was whether it would be able to pass down any service charge to their sub-tenants. The Tribunal is satisfied that the applicant served these sub-tenants as required by the Directions. The unnecessary confusion which has arisen, would have been avoided had there been more effective communication between the parties. The CMH provided an opportunity to provide such clarification.
30. The Tribunal agrees that speed is of the essence for economic and safety benefit of all residents. Mr Shackleton stated that the integrated fire alarm system will be installed as a matter of urgency. It is hoped that this can be installed before Christmas.
31. In the light of the confusion that has arisen, Mr Shackleton confirmed that the managing agents would not be seeking to pass on any of their legal costs through the service charge. All parties agreed that the application fee of £100 was a proper service charge expense. In the light of this, Network Homes did not pursue their application under section 20C of the Act.

Notification of this Decision

32. The Directions made provision for the service of the Tribunal’s determination. The Tribunal will send, by email, a copy of its decision to the applicant and Network Homes. The Tribunal directs the applicant to send a copy to all leaseholders, including the sub-tenants of Network Homes.

Judge Robert Latham
14 December 2020

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 **by e-mail** 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).