



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

Case Reference: LON/00BG/LDC/2020/0109 P

HMCTS code: P: PAPERREMOTE

Property: The flats at Village Court, 25A Park Road, Cheam, Sutton, Surrey SM3 8PY

Applicant: Robert Tuke, Tribunal appointed manager.

Representative : In person

Respondents: The long leaseholders of 11 flats at Village Court named in the application

Representative: None advised

Type of Application: To dispense with the statutory consultation requirements under section 20ZA Landlord and Tenant Act 1985

Tribunal: Judge Pittaway

Date of decision: 3 November 2020

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the applicant and not objected to by any respondent. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper. The documents to which the tribunal was referred are in an electronic bundles of 26 pages, the contents of which the tribunal has noted. In addition the tribunal referred to the lease dated 15 October 2008 of second floor flat known as Flat 8, 15-25 High Street Cheam provided by the applicant with his application as a specimen lease (the ‘**lease**’) The decision made is set out below.

DECISION

The Tribunal grants the application for retrospective dispensation from further statutory consultation in respect of the subject works, namely the replacement of the water pumps at the Property.

The applicant should place a copy of this decision together with an explanation of the leaseholders’ appeal rights on its website (if any) within seven days of receipt and maintain it there for at least three months, with a sufficiently prominent link to both on its home page. It should also display copies in a prominent position in the common parts of the Property.

This decision does not affect the Tribunal’s jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonableness and/or the cost of the work.

The Application

1. The Applicant, a manager appointed by the tribunal after the freeholder went into receivership, seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the **Act**”) for retrospective dispensation from consultation in respect of the replacement of the water pumps at the property and certain ancillary works. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if the landlord plans to carry out qualifying works which would result in the contribution of any tenant being more than £250. The cost of the works the subject of the application exceed this threshold.

2. By directions dated 25 August 2020 (the “**directions**”) the tribunal directed that the applicant send each of the leaseholders the application and the tribunal’s directions and display the same in the common parts of the Property and place them on its website (if any). If no website exists the applicant was directed to write to each leaseholder. The applicant was directed to confirm to the tribunal that it had done so. The applicant confirmed to the tribunal on 9 September 2020 that it had complied with this direction. As it confirmed it had written to each leaseholder it is presumed that there is no website for the Property.
3. The directions required that any leaseholder who opposed the application should tell the tribunal. If they opposed the application they should send the tribunal and the applicant’s representative a statement responding to the application together with any documents they wished to rely on. The tribunal has received no such statements of objection and the applicant has not provided the tribunal with copies of any replies from any leaseholder in his electronic bundle.
4. The directions provided that the tribunal would decide the matter on the basis of written submissions unless any party requested a hearing. No such request has been made.

The applicant’s case

5. The applicant is the tribunal-appointed manager of the Property, the freeholder being in receivership.
6. The lease which the applicant has provided to the tribunal contains a covenant by the landlord, at clause 5.5.1, to maintain and keep in good and substantial repair and condition, ‘all such gas and water mains and pipes drains waste water and sewage ducts and electric cables and wires as may by virtue of the terms of this lease by (sic) enjoyed or used by the Tenant in common with the owners or tenants of all or any of the other flats in the Building”.
7. In his application the applicant explained that he had to carry out urgent repairs to replace the water pumps at the Property, which work was carried out in March 2020. The pumps had failed due to heavy rainfall, resulting in an engineer being required to attend on site every time it rained to clean manually the site.
8. In his statement of case the applicant stated that a notice of intention to replace the two pumps at Village Court was issued on 20 February 2020. Two estimates for the replacements were obtained. Willow Pumps quoted £5,594.40 including VAT and Lucas Mechanical £3,840 including VAT. On 22 February 2020 the pumps failed again, causing a sewage overflow. The engineer called to attend found that the pumps had failed and could no longer automatically pump out

waste and water. On 26 February 2020 the applicant wrote to the leaseholders to advise them that the pumps had ceased to function automatically and would have to be cleared manually on a regular basis. The letter advised the leaseholders that if the applicant followed the statutory consultation process the work could not be scheduled before the end of April. The letter also advised the leaseholders that the applicant proposed to schedule the work to take place as soon as possible and to apply to the tribunal for dispensation from the statutory consultation requirements. Lucas Mechanical were instructed to carry out the work (which involved replacing both pumps, replacing guiderails and control floatswitches and fitting suspension bracket (sic) for the floats) which Lucas Mechanical completed at the quoted price on 4 March 2020.

9. The applicant sought dispensation as he did not consider manual clearing to be a sanitary or financially viable solution. He considered the works to be urgent to minimize the number of times it was necessary to call out an engineer. The applicant states that between 26 February and 4 March the failed pumps overflowed again on 28 February and 3 March 2020.

The Respondents' case

10. No respondent objected to the tribunal about the application and the bundle provided by the applicant to the tribunal contained no objection by any respondent.

Determination and Reasons

11. Section 20ZA(1) of the Act provides:

“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.”

12. The whole purpose of section 20ZA is to permit a landlord to dispense with the consultation requirements of section 20 of the Act if the tribunal is satisfied that it is reasonable for them to be dispensed with. Such an application may be made retrospectively, as it has been made here.
13. The Tribunal has taken account the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 in reaching its decision.

14. There is no evidence before the tribunal that the respondents were prejudiced by the failure of the applicant to comply with the consultation requirements. The tribunal is therefore satisfied that it is reasonable to dispense with all or any of the consultation requirements in relation to the replacement of the water pumps and ancillary works.
15. Whether the works have been carried out to a reasonable standard and at a reasonable cost are not matters which fall within the jurisdiction of the tribunal in relation to this present application. This decision does not affect the tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonableness and /or cost of the works.

Name: Judge Pittaway Date: 3 November 2020

ANNEX - 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.