



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

Case reference : **LON/00AW/LDC/2021/0105**

Property : **16A Brechin Place London SW7 4 QA**

Applicant : **HML Group**

Representative : **Iram Nabi Property Manager**

Respondent : **Leaseholders at 16A Brechin Place as
per the attached Appendix**

Representative : **None**

Type of application : **Section 20ZA Landlord and Tenant Act
1985- To dispense with the requirement
to consult leaseholders about the works.**

**Tribunal
member(s)** : **Judge: N Haria**

**Date and venue of
hearing** : **21 June 2021 Remotely at 10 Alfred
Place, London WC1E 7LR**

Date of decision : **21 June 2021**

DECISION

Decision of the Tribunal:

The Tribunal grants an order dispensing with the consultation requirements imposed under s.20 of the Landlord and Tenant Act 1985 in respect of works for the removal of a shrub growing out of the brickwork at the top of the subject property which comprises a Victorian terraced house converted into three flats at an estimated cost of £ 2650 plus VAT.

The application:

1. The applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) for a dispensation of the consultation requirements imposed under s.20 of the 1985 Act and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (the "2003 Regulations") in respect of works to the property required to replace the electrical substation in order to increase supply capacity.

Hearing:

2. The parties did not request a hearing and so the matter was dealt with on the papers.

Background

3. The property comprises a Victorian terraced building converted into 3 self-contained flats.
4. The Applicant is the property manager.
5. The Applicant claims that the works are required as a fast growing shrub is growing outwards in a dangerous position at the top of the building, the shrub is said to be chipping away and destroying the brickwork.

Directions:

6. The tribunal issued directions on the 30 April 2021 providing for the lessees to be notified of the application and given an opportunity to respond to the application. The tribunal received no responses from the lessees.

Inspection:

7. The Directions issued did not provide for an inspection of the property and no request for an inspection was made by either party. The tribunal did not consider an inspection to be necessary or proportionate to the issue.

The Applicant's Case:

8. The Applicant's case is set out in the application and supporting documents.
9. The Applicant has produced a copy of the leases relating to the flats at the property. The leases are not identical but in a similar form and provide for the landlord to maintain and keep in a good and substantial repair and condition the main structure of the property including the foundations and roof and for the leaseholders to contribute towards the cost of such works by way of a service charge as per the provisions of their respective leases.

The Respondent's Case:

10. The Application and the Directions were sent to the Respondents. The Directions invited representations from the Respondents but no representations have been received.

The Law:

11. **s. 20** of the 1985 Act provides that:

“(1) Where this section applies to any qualifying works....., 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) a leasehold valuation tribunal.”*

12. The effect of s.20 of the 1985 Act is that, the relevant contributions of tenants to service charges in respect of (inter alia) "qualifying works" are limited to an amount prescribed by the 2003 Regulations unless either the relevant consultation requirements have been complied with in relation to those works or the consultation requirements have been dispensed with in relation to the works by (or on appeal from) the tribunal.

13. "Qualifying works" are defined in s.20ZA of the 1985 Act as "works on a building or any other premises", and the amount to which contributions of tenants to service charges in respect of qualifying works is limited (in the absence of compliance with the consultation requirements or dispensation being given) is currently £250 per tenant by virtue of Regulation 6 of the 2003 Regulations.

14. **s. 20ZA** of the 1985 Act provides:

“(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.”

15. Under Section 20ZA(1) of the 1985 Act, "where an application is made to a ...tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements". The basis on which this discretion is to be exercised is not specified.

The consultation requirements for qualifying works are set out in Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003.

The Tribunal's decision:

16. The Supreme Court's decision in the case of Daejan Investments Ltd v Benson and Ors [2013] 1 W.L.R. 854 clarified the Tribunal's jurisdiction to dispense with the consultation requirements and the principles upon which that jurisdiction should be exercised.
17. The scheme of the provisions is designed to protect the interests of leaseholders, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose. The purpose of the consultation requirements is to ensure that leaseholders are protected from paying for works which are not required or inappropriate, or from paying more than would be reasonable in the circumstances.
18. The Tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any prejudice has been suffered by any leaseholder as a consequence of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.
19. The burden is on the Applicant in seeking a dispensation from the consultation requirements. However the factual burden of identifying some relevant prejudice is on the leaseholder opposing the application for dispensation. The leaseholders have an obligation to identify what prejudice they have suffered as a result of the lack of consultation.
20. The tribunal having considered the evidence is satisfied that the works are qualifying works to which the provisions of s. 20 of the 1985 Act and the 2003 Regulations apply.
21. The tribunal is satisfied that the works were of an urgent nature given that if the works were not undertaken there was a potential of damage to the property.

22. The tribunal is satisfied that the works are for the benefit of and in the interests of both landlord and leaseholders in the Property. The tribunal noted that none of the leaseholders had objected to the grant of dispensation.
23. The tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to the failure to consult. The tribunal noted that the managing agent had not obtained an independent report from an expert, the leaseholders have not had the chance to nominate a contractor of their choice and the works had not been put out to tender so the tribunal cannot be sure that the cost of the works are reasonable.
24. The tribunal has taken into consideration that the leaseholders have not had the opportunity to be consulted under the 2003 Regulations. However, the works were urgent and the Applicant has taken reasonable steps in the circumstances and time available, to provide the leaseholders with relevant information. In view of the urgent nature of the works and the circumstances under which the works became necessary the tribunal does not consider that the leaseholders, in losing an opportunity to make observations and to comment on the works or to nominate a contractor, have suffered any significant relevant prejudice.
25. The tribunal having considered the evidence is satisfied that it is reasonable to dispense with the consultation requirements in this case. In the circumstances, the tribunal makes an order that the consultation requirements are dispensed with respect of

Name: Judge N Haria

Date: 21 June 2021

APPENDIX

Name: Mr R Hardick & Ms T R Hardick

Address: Basement & Ground Floor Flat 16A Brechin Place London SW7

Name: The Honourable R W R T Stonor & Lady A F Stonor

Address: Flat 1 situated on 1st & 2nd Floors 16A Brechin Place London SW7

Name: Mr A E McLaren & Ms C F N McLaren

Address: Flat 2 situated on 3rd & 4th Floors 16A Brechin Place London SW7

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).