



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

Case Reference	:	LON/00BK/LDC/2021/0162 [PAPERREMOTE]
Property	:	72-76 Westbourne Grove and 2 Monmouth Place London W2 5SH
Applicant	:	A Moussaioff (1) and (2) C Cousins
Representatives	:	HML Group Managing Agents- Ms Paulene Holden
Respondent	:	The leaseholders listed in the application
Representative	:	Not applicable
Type of Application	:	Application for the dispensation of consultation requirements pursuant to S. 20ZA of the Landlord and Tenant Act 1985
Tribunal Members	:	Judge Prof Robert Abbey
Date and venue of Hearing	:	30 September 2021 by a paper- based decision
Date of Decision	:	30 September 2021

DECISION

Decisions of the tribunal

- (1) The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act).
- (2) The reasons for our decisions are set out below.

The applications

1. In relation to the flats at **72-76 Westbourne Grove and 2 Monmouth Place London W2 5SH** (“the properties”) the applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act, (see the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987), Schedule 4.) The landlord has applied for dispensation from the statutory consultation requirements in respect of drainage works at or beneath the property. An interceptor cap has gone missing leading to rat infestation and other issues as detailed in the application. CCTV investigation works were required as set out in the invoice from Cascadia Water dated 9th June 2020 in the sum of £1050. The application was considered to be urgent for health and safety reasons and for environmental reasons. The work has been carried out so this is a retrospective application.
2. The relevant legal provisions and rules and appeal rights are set out in the Appendix and Annex to this decision.

The hearing

3. This has been a remote hearing on the papers which has been consented to or not objected to by the parties. The form of remote hearing was classified as P (PaperRemote). A face-to-face hearing was not held because it was not practicable given the COVID-19 pandemic (and the need for social distancing) and no one requested the same or it was not practicable and all issues could be determined in a remote hearing on paper. The documents that the Tribunal was referred to are in the electronic bundle supplied by the applicant.
4. In the context of the COVID-19 pandemic and the social distancing requirements the Tribunal did not consider that an inspection was possible. However, the Tribunal was able to access the detailed and extensive paperwork in the trial bundle that informed their determination. In these circumstances it would not have been proportionate to make an inspection given the current circumstances and the quite specific issues in dispute.

5. The tribunal had before it a trial bundle of documents prepared by the one of the parties in accordance with previous directions. The trial bundle comprised electronic versions of the application, Directions, copy deeds, contracts, documents, letter, invoices and estimates and emails.

The background and the issues

6. The Premises consists of a 10-unit property consisting of a mixed development of 7 flats 1 office and 2 shops. The individual flats are let on long leases and are all in the same format and include all the same provisions covenants and conditions.
7. The respondent/tenants hold long leases of the individual properties which require the applicant/landlord to provide services and the tenant to contribute towards their costs by way of a service charge. The applicant tenants must pay a percentage defined in their leases for the services provided.
8. The application to be considered by the tribunal focused upon drainage works as set out above in paragraph 1 hereof and more particularly detailed in the application. The application was made to seek dispensation under section 20ZA of the 1985 Act from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act in respect of works carried out to the properties. With regard to the grounds for seeking dispensation the applicant stated in the S20ZA application that the application was required in respect of urgent works to repair the drainage system. The applicant says the repair work instruction has already been given as the work was urgently needed to ensure the health and safety of all persons at and in the property.
9. The matters in issue now fall to this Tribunal to determine as more particularly set out below.

The dispensation issues and decision

10. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements in respect of the drainage system works. This application does not concern the issue of whether or not service charges will be reasonable or payable.
11. Having considered all of the copy deeds documents and legal submissions provided by both parties, the Tribunal determines the issue as follows.

12. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
13. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by such an application as is this one before the Tribunal. Essentially the Tribunal have to be satisfied that it is reasonable to do so.
14. The works carried out by the applicant were urgent works to the drainage system at the property. It was apparent that there were significant issues affecting the main sewer pipe at the property causing rat infestation and other drainage issues.
15. The Tribunal did not receive any objections about the works sent directly to it and no objections were lodged with the applicant's managing agents. Therefore, the Tribunal takes the view that there are no objections to this application.
16. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14 by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.
17. The court came to the following conclusions:
 - a. The correct legal test on an application to the Tribunal for dispensation is:
"Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord's failure to comply with the requirements?"
 - b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.
 - c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord's failure to comply.
 - d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.

- e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
 - f. The onus is on the leaseholders to establish:
 - i. what steps they would have taken had the breach not happened and
 - ii. in what way their rights under (b) above have been prejudiced as a consequence.
18. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the lessor and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above. It should also be remembered that no leaseholder appears to have lodged an objection to this application.
19. The tribunal was of the view that they could not find significant relevant prejudice to the tenant/respondents. The tribunal accepted the landlord's submission in this regard was sufficient to enable the Tribunal to make a finding allowing dispensation given the emergency nature of the works to effect the necessary drainage works and given the obvious need to try to keep leaseholders, residents and flats as safe as possible.
20. The applicant believes that the works are vital given the nature of the problems reported. The applicant also says that in effect the tenants of the properties have not suffered any prejudice by the failure to consult. On the evidence before it the Tribunal agrees with this conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application.
21. Rights of appeal made available to parties to this dispute are set out in an Annex to this decision.
22. The applicant shall be responsible for formally serving a copy of the tribunal's decision on all leaseholders. Furthermore, the applicant shall place a copy of the tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. Copies must also be placed in a prominent place in the common parts of the block. In this way, leaseholders who have not returned the reply form may view the tribunal's eventual decision on dispensation and their appeal rights on the applicant's website.

Name: Judge Professor Robert
M. Abbey

Date: 30 September 2021

Appendix of relevant legislation and rules

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

20B Limitation of service charges: time limit on making demands.

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20ZA Consultation requirements

(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, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

....

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

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.