



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

Case Reference	:	LON/00AY/LDC/2021/0210 P: PAPERREMOTE
Property	:	Whitehouse Apartments 9 Belvedere Road, London, SE1.
Applicant	:	South Bank Management Company Limited
Representative	:	Fairweather Law
Respondents	:	The leaseholders listed in the schedule to the application
Representative	:	Unrepresented
Type of Application	:	Section 20ZA Landlord and Tenant Act 1985 Dispensation with consultation requirements
Tribunal member(s)	:	Mr M Taylor MRICS (Valuer Chair)
Date of Paper Determination	:	22 November 2021
Date of Decision	:	22 November 2021

DECISION

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper. The documents that I was referred to are in a bundle of 170 pages, the contents of which I have noted.

Decision of the Tribunal

- (a) The Tribunal grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') for works undertaken to upgrade/replace lighting and emergency lighting to common areas and under-croft parking at Whitehouse Apartments, 9 Belvedere Road, London SE1 ('the Property').**
- (b) The term imposed on the grant of dispensation is that the costs of preparation, including legal fees and the application are borne by the applicant and not recoverable from the respondents via the service charge.**
- (c) The applicant shall send a copy of this decision to each of the respondents, either by email, hand delivery or first-class post and shall send an email to the Tribunal by 1st December 2021, confirming the date(s) when this was done.**

The application

1. The applicant seeks dispensation from the consultation requirements imposed by section 20 of the 1985 Act.
2. The application was submitted on 10th August 2021 and directions were issued on 1st September and 2nd November 2021. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 22nd November 2021.
3. The relevant legal provisions are set out in the appendix to this decision.

The background

4. The Property comprises a block of 373 purpose-built flats and 4 commercial units over 13 floors. Little detail of the property//construction has been provided It appears, from Google Street View, to have been constructed circa 20 years ago, with stone/ rendered façade with a steel or concrete frame.
5. The applicant seeks dispensation from the statutory consultation requirements for proposed works to the lighting in common parts and emergency lighting, which was installed some 9 years ago and is subject to wide spread failure and in need of replacement. The decision was made to upgrade to LED lighting rather than a direct replacement and add emergency lighting to the under-croft. The applicant relies on a

report/quotation/specification from BAM Energy acting on behalf of BAM Facilities management. Together with subsequent correspondence providing clarification on this report, recommending various options to mitigate Health and Safety risks associated with the failure /absence of lighting and had an estimated capital expenditure of £93,574.01.

6. It is not entirely clear but this specification for the works then appears to have been market tested by seeking quotations from 2 other parties
 - (i) City electrical Factors (fittings) and TES Electrical (installation) at £97,355.29 (£116,976.51 inc VAT), and
 - (ii) Edmundson Electrical £106821.49 inc VAT
7. The application states that the lowest tenderer was appointed and had the benefit of the experience of the specialist knowledge of Technical Electrical Services Ltd. However, in the bundle it would appear that Technical Electrical Services were tendering with City Electrical Factors and this was the highest quotation. It maybe that this company had submitted a quotation working with the successful party but this is not clear from submissions.
8. The applicant does not evidence any formal consultation under section 20. Following directions from the Tribunal a letter was sent to all respondents on 14th September 2021. Six leaseholder responses were received seeking broadly clarifications over costs of process, tender information and effect on service charge. These appear to have been answered with a generic letter indicating the reasons for the application and that it would cost approximately £100,000 and be apportioned via service charge. None of these parties objected to the application.
9. The only issue for the Tribunal is whether it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

The grounds of the application

10. The grounds are set out in the application dated 10th August 2021 and can be summarised as follows:
 - (a) The Works are urgent and necessary due to Health and Safety concerns.
 - (b) It is reasonable to dispense with the consultation requirements

- (c) The residents are not prejudiced
11. Paragraph 1 of the directions gave the respondents an opportunity to object to the dispensation application by completing and returning reply forms and serving statements, setting out their grounds of opposition. No forms were returned.

The Tribunal's decision

12. The Tribunal grants retrospective dispensation for the Works. The term imposed on the grant of dispensation is that the costs of preparation, including legal fees, and the application are to be borne by the applicant and not recoverable from the respondents via service charge.

Reasons for the tribunal's decision

13. The Tribunal accepts that the Works are necessary and urgent, given the contents of the BAM Facilities management report reference in correspondence but not provided in the bundle.
14. Whilst no objections have opposed the dispensation application the tribunal is concerned that there is some inconsistencies/poor presentation of the facts surrounding the tender process and no attempt to comply even with the spirit of the consultation process of s20 of the act despite the matter being identified in January 2021.
15. Having regard to the particular facts of this case and the guidance in *Daejan Investments Limited v Benson [2013] UKSC 14*, it is reasonable to dispense with the strict consultation requirements.
16. This decision does not address the cost of the Works, or whether the respondents are liable to contribute to the cost via their service charges. Nothing in this decision prevents the respondents from seeking a determination of 'payability', pursuant to section 27A of the 1985 Act. I

Name: Valuer Chair Mark Taylor **Date:** 22nd November 2021

Rights of appeal

1. 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.

2. 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.
3. 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.
4. 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.
5. 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.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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 the appropriate tribunal for a determination to dispense with all of 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.

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.