



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

Case Reference : CHI/00HB/LDC/2021/0090/AW

Property : Thomas Lane, Redcliffe, Bristol BS1 6JT

Applicant : Thomas Lane Apartments Management Company Limited

Representative : Andrews Leasehold Management

Respondent : The lessees

Representative : -

Type of Application : To dispense with the requirement to consult lessees about major works: section 20ZA of the Landlord and Tenant Act 1985

Tribunal Member(s) : Judge J Dobson

Date of Directions : 18th November 2021

DECISION

Summary of the Decision

1. **The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act in respect of major works, being works to balconies and related. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

The application and the history of the case

2. The Applicant management company applied by application dated 5th October 2021 for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) from the consultation requirements imposed by Section 20 of the Act.
3. The Tribunal gave Directions on 13th September 2021, explaining that the only issue for the Tribunal is whether, or not, it is reasonable to dispense with the statutory consultation requirements and is not the question of whether any service charge costs are reasonable or payable. The Directions Order listed the steps to be taken by the parties in preparation for the determination of the dispute, if any.
4. The Directions further stated that Tribunal would determine the application on the papers received and that having considered the application the Tribunal was satisfied unless any objection was received. None has been.
5. This the Decision made on that basis and following a paper determination.

The Law

6. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.
7. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation “if satisfied that it is reasonable to dispense with the requirements”.
8. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.
9. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been

prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were “a means to an end, not an end in themselves”.

10. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).
11. Where the extent, quality and cost of the works were in no way affected by the lessor’s failure to comply, Lord Neuberger said as follows:

“I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with.”
12. The “main, indeed normally, the sole question”, as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.
13. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.
14. If dispensation is granted, that may be on terms.

Consideration

15. It is said in the application that the Property, i.e. Thomas Lane Apartments consists of 26 apartments and 1 commercial unit spread over 7 floors. The application adds that the car park is shared by St Thomas Court apartments and the offices along with the commercial unit. The building is stated to be purpose built with external balconies both internal to the car park area and externally overlooking Thomas Lane.
16. The Applicant explains that an external wall survey carried out recommends removal of combustible material from the external balconies and from internal balconies in the car park for fire safety reasons. The intention is to replace the combustible timber decking to the balconies with aluminium sections and with frosted glass balustrades. The dispensation sought relates to that work.
17. The Directions describe that survey as very recent. However, that may be resulted from a misunderstanding as to the date of the survey, or the

date shown on the application may be incorrect. The date stated is 8th October 2020. The survey itself has not been provided, although in this instance nothing turns on that in light of the situation as described below.

18. A sample lease was provided with the application (“the Lease”) and dated 20th December 2004. The Tribunal understands that the leases of the other Flats are in the same or substantively the same terms.
19. The Lease is tripartite. The Applicant is the third named part and described in the Lease as “the Company”.
20. The “Common Parts” in respect of which the Applicant has responsibilities as provided for in the Lease, are defined in clause 2.1 to include the main structure, external walls and other elements of buildings on “the Estate” and the Estate generally. “The Premises” leased by the lessee are also defined in clause 2.8 and are stated in clause 2.8 to exclude all structural parts of “the Building”.
21. That definition lists various elements of the Common Parts, which consequently are not part of the Premises, and that list includes “any balcony”. Service charge is defined in clause 2.10 in the usual manner as being the lessee’s contributions to the cost incurred by the Lessor and, in this instance, the Company Applicant.
22. The Lessor’s obligations are set out in the Fourth Schedule and what are described as “The Company’s Management Duties” are set out in the Fifth Schedule. Those duties include maintaining and repairing the Estate, including the building.
23. Accordingly, the balconies fall within the responsibility of the Applicant.
24. There has been no response from any of the Lessees opposing the application. Indeed, the three Lessees who have responded have agreed to the application.
25. None of the Lessees have therefore asserted that any prejudice has been caused to them. The Tribunal finds that nothing different would be done or achieved in the event of a full consultation with the Lessees, except for the potential delay and potential problems.
26. Accordingly, the Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.
27. The Tribunal consequently finds that it is reasonable to dispense with all of the formal consultation requirements in respect of the major works to the building.

28. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying long-term agreement. The Tribunal has made no determination on whether the costs are reasonable or payable. If a Lessee wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1968 would have to be made.