



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

Case Reference : **LON/00BK/LDC/2022/0234**

Property : **80 Lupus Street, Pimlico,
London, SW1V 3EL**

Applicant : **80 Lupus Street RTM Company Ltd**

Representative : **Clarke Willmott LLP**

Respondents : **The leaseholders of the five
residential flats listed in the
application**

Representative : **In person**

Type of Application : **For dispensation from the
consultation requirements under
section 20ZA Landlord & Tenant
Act 1985**

Tribunal : **Mr R Waterhouse BSc (Hons) LLM
Property Law MA FRICS**

Date of Decision : **23rd January 2023**

DECISION

This has been a remote paper determination, which has been consented to by the parties. A face-to-face hearing was not held because it was not practicable and no one requested same.

The documents the Tribunal were referred to were in a bundle of some 246 pages.

Decision

- (1) The tribunal determines that unconditional dispensation should be granted from the consultation requirements from section 20ZA of the Landlord and Tenant Act 1985 (the Act) in respect of the property 80 Lupus Street, Pimlico, London SW1V 3EL.**
- (2) We make no determination as to the reasonableness of the costs of same, these being matters which can be considered, if necessary, under the provisions of s27A and s19 of the Act.**

The application

1. This Application is made by 80 Lupus Street RTM Company Ltd dated 2nd November 2022.
2. The Application seeks dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985.
3. The Application is concerned solely with the question of what consultation if any should be given of the consultation requirements of section 20 of the 1985 for works costing in excess of £250 per flat. It is not concerned with the reasonableness or payability of any service charges which may arise.

The hearing

4. A written Application was made by Clarke Willmott LLP, who have been appointed by 80 Lupus Street RTM Company Ltd, to make this application. The case was decided on paper and no appearances were made. The tribunal considered the written bundle of 246 pages, in support of the Application.

Background

5. The property comprises; six individual leasehold properties of mixed residential and commercial use/ It has five residential flats, (1) Basement, (2) First floor (3) Second Floor (4) Third Floor, (5) Top Floor, the ground floor is commercial known as the ground floor shop.
6. The Applicant in this case is a residents owned company limited by guarantee.
7. This Application has been issued because it “is urgent on the basis that some of the works are needed to be commenced as soon as possible to the roof, of the building as soon as possible to prevent further water ingress, to protect its stability and structure, and to ensure that the safety of the residents and occupiers of the building”.
8. The Application notes, “The qualifying works relate to remedial works, required to the roof of the Building, following a leak to the roof after severe weather. There are two aspects of the works, but they form the same set of qualifying works, (1) remedial works required to the mansard slate roof, (2) remedial works required to the flat roof. “
9. “The qualifying works in relation to the Mansard slate roof, were commenced in July 2021, and completed in October 2021.”
10. The qualifying works in relation to the flat roof, are yet to be commenced and will proceed once an order is obtained.”
11. “The applicant was unable to comply with the formal consultation process under section 20 Landlord and Tenant Act 1985. To protect the stability and structure of the Building, prevent any further substantial damage from occurring and ensure no serious harm came to the Respondents and occupiers for each stage of the consultation procedure as prescribed by the Service Charges (Consultation Requirements) (England) (Regulations) 2003 would have resulted in an unacceptable delay to the works being carried out to the detriment of the Respondents.”
12. The Directions dated 6th December 2022, provided for the tenants to be given copies of the Application form, a brief statement to explain the reasons for the Application and display a copy of the directions in a prominent place in the common parts of the property, by 12th December 2022.

11. The Directions also note that any leaseholder who opposes the Application should by the 3rd January 2023 complete the reply form and return it to the tribunal.
12. The only issue for the tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements of section 20 of the 1985 Act. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

Documents

13. The Applicant through the Application form, notes that they have engaged with the Respondents informally. “The Applicant wrote directly to the Respondents by way of e mail on 21 June 2021 and 5 July 2021 informing them of the works required, details of when they would commence and inviting them to raise any questions or concerns. Additionally, “The Applicant has conducted a thorough investigation with numerous specialist roofing contractors to obtain the best price and the quickest response time for the work to be conducted.”
14. There is a witness statement from David James who is Director and Company Secretary of 80 Lupus Street RTM Company Ltd which contents were considered fully. Date of the statement being 2nd November 2022.
15. By letter dated 11th December 2022 Beckett Solicitors acting for Ms Campbell-Hughes, leaseholder for the first floor flat claims a witness statement was not sent to the leaseholder as at 11th December 2022 and that the leaseholder intends to oppose the Application.
16. By way of e mail dated 12th December 2022, David James on behalf of the 80 Lupus Street RTM Company Ltd replied noting a copy of the witness statement should now have been sent. There are copies of a number of e mails between solicitors for the Applicant and the Respondent Ms Campbell-Hughes solicitors. The Respondent expressed concerns over whether the fee quoted for the roof is the final amount.

The tribunal’s decision

14. The tribunal grants dispensation under section 20 ZA of the Landlord and Tenant Act 1985 and the Service Charges (Consultation) (England) 2003 for the works set out in the application.

15. We are, aware of the judgment in Daejan Investments Limited v Benson and others [2013] UKSC 14. The application for dispensation is not challenged.
16. The Supreme Court (Lord Neuberger at para 50) accepted that there must be real prejudice to the tenants. Indeed, the Respondents do not oppose the application. It is accepted that we have the power to grant dispensation on such terms as we think fit. However, the Landlord is entitled to decide the identity of the contractors who carry out the work, when they are done, by whom and the amount. The safety net for the Respondents is to be found in sections 19 and 27A of the Landlord and Tenant Act 1985.
17. Accordingly, we find that unconditional dispensation should be granted. In making our decision we have borne in mind the quotes which we were referred, which in our finding clearly indicate that works are required at the Property.
18. Our decision is in respect of the dispensation from the provisions of s20 of the Act only. Any concern that a Respondent, including the concerns of Ms Campbell-Hughes, has as to the standard of works, the need for them and costs will need to be considered separately, following an application to do so should one be made, and their position is not affected by our decision on this application.

Richard Waterhouse

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| Name: | Richard Waterhouse LLM FRICS | 23rd January 2023. |
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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 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 to 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 (ie 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**