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Case Reference : **LON/00AY/LDC/2022/0180**

Property : **63 Thornton Avenue London SW2
4BD**

Applicant : **63 Thornton Avenue RTM Company
Limited**

Representatives : **Warwick Estates**

Respondents : **The 3 leaseholders set out the sched-
ule attached to the application**

**Type of
Application** : **Application for the dispensation of
consultation requirements pursuant
to S. 20ZA of the Landlord and Tenant
Act 1985**

Tribunal Member : Duncan Jagger MRICS

**Date of
Determination
and
Decision : 27th March 2023**

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 the Tribunal's decision are set out below.

The background to the application

1. The property is a mid terrace Victorian building which has been converted to form three self contained flats.
2. The tribunal did not inspect the property as it considered the documentation and information before it in the set of documents prepared by the Applicants Managing Agents which enabled the tribunal to proceed with this determination
3. This has been a paper hearing which has been consented to by the parties. The documents that were referred to are prepared by the applicants managing agents, including the tribunals Directions the contents of which we have recorded. Therefore, the tribunal had before it a bundle of documents extending to 68 pages prepared by the applicants

agent, in accordance with previous directions. The bundle contained a copy of the lease for flat 3 which, assuming to be the same for all, reflected the repairing obligations of the parties and that the Landlord was responsible for repair to the roof and rainwater fittings

4. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) 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 request for dispensation concerns urgent works for the eradication of Japanese Knotweed growing in the rear garden of the property.

5. The application is said to be urgent, as the plant is growing at an aggressive rate and in order to prevent potential damage to the fabric of the building, foundations and neighbouring property the applicant wishes to proceed with the removal works as soon as possible. Such works were carried out by Japanese Knotweed Eradication Ltd providing a 2 year maintenance plan and 10 year warranty. This contractor provided a quotation for the said works at £2118 inclusive of VAT.

6. Section 20ZA relates to consultation requirements and provides as follows:

“(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.

7. The 3 leaseholders (assumed directors of the RTM Company) were emailed by the managing agents to confirm an application was being made to this Tribunal

8. The Directions on 27th January 2023 required any of the 3 leaseholders who opposed the application to make their objections known on the reply form produced with the Directions by the 10th February 2023. The Tribunal has not been made aware of any objections by this date.

9. **The Decision**

10. By Directions of the tribunal dated 27th January 2023 it was decided that the application be determined without a hearing or by way of a video hearing.

11. **The issues**

12. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether or not service charges will be reasonable or payable.**

13. Having read the evidence and submissions from the Applicant and having considered all of the documents and grounds for making the application provided by the applicants, the Tribunal determines the dispensation issues as follows.

14. 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.

15. 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 must be satisfied that it is reasonable to do so.

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 Supreme 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.
16. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.
17. The tribunal is of the view that, taking into account that there were no objections from the 3 leaseholders, it could not find prejudice to any of the leaseholders of the property by the granting of dispensation relating to the essential works for the removal of the Japanese Knotweed growing in the rear garden as set out in the documentation in the bundle submitted in support of the application.

18. The Tribunal was mindful of the fact that the works were undertaken by a specialist company who prepared a report in connection with this invasive plant that is known to cause severe damage to a building and that therefore dispensation is wholly appropriate.
19. The applicant believes that the works were vital in order to prevent potential damage to the building and neighbouring properties. 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. It must be the case that the applicant must ensure that the fabric of the building is properly protected to the satisfaction of the leaseholders in accordance with the terms of the lease. The removal of the plant was therefore carried out as a matter of urgency, hence the decision of the Tribunal.
20. Rights of appeal made available to parties to this dispute are set out in an Annex to this decision.
21. The applicants shall be responsible for formally serving a copy of the tribunal's decision on the four leaseholders. Furthermore, the applicants 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 buildings. In this way, any leaseholders who have not returned the reply form may view the tribunal's eventual decision on dispensation and their appeal rights. The Tribunal requests the applicants managing agent to confirm to the Tribunal this has been carried out.

Name: Duncan Jagger MRICS **Date:** 27th March 2023

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.