



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

Case reference : LON/00AW/LDC/2023/0019

Applicant : Queens Gate (71) Limited

Representative : Susan Metcalfe Residential Property Management

Respondents :
(1) Marrygold Limited – Dr Mahesh Patel
(2) Marne Limited – Neil Patel
(3) Mahendra Pratap Singh and Usha Singh
(4) Haider Al-Najafi
(5) Kelly Courtney Ghioules
(6) Thomas Finbar Doyle & Gledis Viac Doyle

Property : 71 Queens Gate, London, SW7 5JT

Tribunal : Judge Timothy Cowen

Date of decision : 28 March 2023

SUBSTANTIVE DECISION

Decision of the tribunal

The tribunal grants unconditional dispensation in respect of the Applicant's proposed works.

REASONS

1. This is an application by the Applicant Landlord under section 20ZA of the Landlord and Tenant Act 1985 to dispense with the consultation requirements under section 20 of that Act.

2. The application is in respect of damp proofing works to the communal basement hallway and rear basement flat, in order to remedy a rising damp issue, together with making good the decoration of the communal hallway. As at the date of the application, the qualifying works had not yet been carried out. A notice under section 20 was served by the Applicant on 2 June 2020 and the Applicant has kept the leaseholders informed throughout by email. A tender report was sent to the leaseholders in November 2020. The leaseholders have been supplied with updated estimates for the proposed works. The delay since 2020 has been caused by the need to obtain listed buildings consent, which was finally granted in November 2022 following an application made in 2021.
3. The Applicant now proposes to instruct the lowest bidder in the original tender process subject to a revised quote and amended scope of works. The Applicant's case is that the majority of the leaseholders have agreed to the revised estimate and scope of works.
4. The works have become urgent because the basement flat has become uninhabitable as a result of the severe damp.
5. 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 are recoverable or payable.
6. The application is dated 9 January 2023 and directions were given on 6 February 2023 directing that the application be decided on paper without a hearing in the week commencing 27 March 2023, unless any party requested a hearing. No party requested a hearing and this therefore is the decision of the Tribunal after considering the matter on paper without a hearing.
7. The Property is a converted 6 storey mansion block containing 6 flats.
8. I have seen a sample lease for the lower ground floor flat. Clause 4(4) of the lease requires the tenant to pay the Service Charge, which is defined as the tenant's proportion of the total expenditure incurred by the landlord in complying with clause 5(5). Clause 5(5) is the landlord's covenant to main the structure and communal parts of the building. The cost of the proposed works therefore falls within the service charge covenant and section 20 of the 1985 Act therefore applies to any such works the costs of which would exceed £250 per leaseholder as service charges.
9. The directions further provided for the application to be sent by the Applicant to all the leaseholders and for any leaseholders who wish to oppose the application to complete and return the reply form with their reasons by 6 March 2023. No reply forms opposing the application were sent to the Tribunal by that date.

10. On 20 March 2023, Mr Thomas Doyle, one of the leaseholders, wrote to the landlord's representatives by email and copied in the Tribunal. He said that he objects to the application because he wants there to be an EGM to discuss the percentage allocation of the costs of remedying the damp.
11. I must consider whether to grant dispensation. The relevant statutory provisions are found in subsection 20ZA (1) of the 1985 Act under heading "Consultation Requirements: Supplementary". That subsection reads as follows: "*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 it is reasonable to dispense with the requirements*".
12. In the light of the decision of the Supreme Court in *Daejan Investments v Benson* [2013] UKSC 14, the Tribunal must consider whether dispensation would cause prejudice to the leaseholders. The burden of identifying relevant prejudice falls on the leaseholders who are seeking to resist the application. Furthermore, the decision in *Daejan* made it clear that the purpose of the statutory consultation requirements was to ensure (a) that the leaseholders were protected from paying for inappropriate works and (b) from paying more than was appropriate.
13. The only objection is from Mr Doyle. His objection does not go to either of those two issues. The question of apportionment of service charges would properly be dealt with under other applications and claims which could be brought in the Tribunal or county court by Mr Doyle or others. It is not an issue which I can take into account under this application. Similarly, if he wishes to enforce any rights he may have to call a meeting as a shareholder of the Applicant company, there may be remedies available to him in other courts, but that is also not an issue for this application.
14. In my judgment, none of the matters raised by Mr Doyle amount to prejudice for the purposes of section 20ZA of the 1985 Act. The works seem on their face to be appropriate and there is no-one who says otherwise.
15. I have also taken into account the fact that the Applicant has done its best to comply with as much of the section 20 process as possible in the circumstances. In particular, the Applicant has served a section 20 initial notice on the leaseholders inviting observations, has supplied a report on the tendering process, selected the lowest tender and supplied the leaseholders with copies of an updated tender and scope of works from that contractor. Now that the listing building consent has been granted and the work has become urgent, it is reasonable for the landlord not to have to go through any outstanding steps in the consultation requirements. I further note that the leaseholders have not served any adverse observations throughout the process. In the circumstances, I am satisfied that the leaseholders would not be prejudiced by the dispensation requested.

16. For all of the above reasons I conclude that it is appropriate to exercise the discretion conferred by section 20ZA of the 1985 Act by dispensing with the consultation requirements in relation to the proposed works. I have considered whether any it would be appropriate to impose any conditions. The leaseholders have not incurred any costs in these proceedings and I have not identified any prejudice which could be remedied by the imposition of conditions. I therefore give dispensation without conditions.
17. For all the above reasons, I have made the order set out above.

Name: Judge T Cowen

Date: 28 March 2023

Rights of appeal

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.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).