



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

Case reference : **LON/00AT/LDC/2022/0090**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **Brentford Dock Estate, Justin Close,
Brentford, TW8 8QR**

Applicant : **Brentford Dock Limited**

Representative : **Michael Richards and Co (John
Antrobus)**

Respondents : **The Leaseholders of the 591 Dwellings
on the Estate, as listed in the Schedule
attached to the Application**

Representative :

Type of application : **Application for dispensation from
consultation requirements**
Section 20ZA Landlord and Tenant Act 1985

**Tribunal
member(s)** : **JUDGE SHAW
Ms M KRISKO FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **20th July 2022**

DECISION AND REASONS

Decision

(1) The requirements of section 20 of the Landlord and Tenant Act 1985 are hereby dispensed with in respect of the Qualifying Long Term Agreement entered into in for insurance cover at the Property, as particularised below.

(2) In granting dispensation in respect of the works, the Tribunal makes no determination as to whether any service charge costs incurred in respect of such insurance are reasonable or payable.

Reasons

The Application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 ('the Act'), for dispensation from the requirements to consult in advance in respect of a Qualifying Long Term Agreement as set out in section 20 of the Act.

Procedural History

2. This has been a remote determination 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 all the issues could be determined on the papers provided.
3. The documents that the Tribunal were referred to were provided in a bundle comprising 161 pages.
4. The Applicant made the Application on **6th May 2022**. Directions were given on **27th May 2022**, which included a requirement that the Applicant notify the leaseholders of the application and the Directions. Compliance with this Direction was communicated to the Tribunal by e-mail of **10th June 2022**. Compliance took place by delivering the documents on **9th June 2022** by email to 553 leaseholders, and hand delivery or first-class post to the remainder. The Applicant was also required to display the documents in a prominent place in the communal areas, and the Tribunal was supplied with photographic confirmation that this had taken place.
5. Leaseholders had until **23rd June 2022** to provide any notification to the Tribunal that they opposed the application, and to provide to the Applicant with their written reasons.
6. Of the 3 email responses received from the 591 leaseholders, one was fully supportive and neither of the other two opposed the application. A further written objection dated **22nd June 2022** was received by the Applicant and the Tribunal, which expressed concerns about a 3 year advance payment of premiums resulting in loss of interest for the leaseholders, and noted a lack of information concerning offers from other insurers, and claims history.
7. These concerns were addressed on behalf of the Applicant by letter dated **23rd June 2022**. There is no 3 year advance payment, and information as to the testing of the market, and the claims history impact on the premium, was also supplied. The Tribunal has not been supplied with any response to this letter.

Facts

The Applicant seeks, in effect, retrospective dispensation from the consultation requirements, because the Qualifying Long Term Agreement has already been entered into. A full explanation of why it was considered appropriate to enter into this agreement without compliance with the provisions of section 20, concerning statutory consultation, is set out in the Applicant's agent's letter to the leaseholders dated **11th April 2022**, appearing at pages 33/34 of the bundle.

8. In short, the building insurers since 2014 (Allied World Assurance Company Limited) were initially seeking a 9% uplift in annual premium. After negotiation with the Applicant's brokers, it became possible to enter into a 3 year agreement, which would in fact result in an initial 5% reduction in the premium (compared with the previous year) and subsequent potential savings for the 2 further years. The details are helpfully set out on a grid contained within the said letter. The Directors of the Applicant had a limited opportunity to accept the offer, and it was deemed in the interests of all leaseholders to do so, given the volatility in the world insurance market.
9. The letter proceeds to explain to the Respondents, the fact that such a contract represents a Qualifying Long Term Agreement for the purposes of the Act, and that a dispensation order will be required from the Tribunal, an application for which will be made.

The Law

10. Section 20ZA of the Act states that the Tribunal may determine that there should be dispensation from the consultation requirements set out in section 20 of the Act in respect of any qualifying works or qualifying long term agreement when '*it is satisfied it is reasonable to do so*'.
11. In *Daejan Investments Ltd v Benson* [2013] UKSC 14, the Supreme Court set out the following factors to be taken into account:
 - a) The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
 - b) The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
 - c) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - d) The Tribunal has power to grant a dispensation as it thinks fit, including on terms, provided that any terms are appropriate.

- e) The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
- f) The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
- g) The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
- h) The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- i) Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Decision

12. There has been only been one objection to the entry into the Qualifying Long Term Agreement (in the context of 591 leaseholders), and that objection has been fully responded to promptly on behalf of the Applicant. It seems to the Tribunal that insofar as that objection raised issues of prejudice, the Applicant in its response has rebutted any such prejudice. On the material presently before the Tribunal, it appears reasonable to the Tribunal to dispense with the section 20 consultation requirements, because on the face of it, the opportunity to enter into this Qualifying Long Term Agreement appears to have been in the interests of the Respondents, and may have been lost had the full consultation procedure been embarked upon and completed.
13. In light of the facts, the Tribunal considers it reasonable retrospectively to dispense with the section 20 requirements in respect of the Qualifying Long Term Agreement for insurance referred to in the Application, and the Tribunal makes the necessary Dispensation Order.
14. It should be understood by all parties that in so determining, the Tribunal makes no decision on any question in respect of the reasonableness or payability of these relevant costs to be recharged to leaseholders through the service charge. In relation to these matters and quantum generally, it remains open to them to make such application as they may wish, under section 27A of the Act.

Name: Judge Shaw

Date: 20th July 2022

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).