



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

Case reference : **LON/00AT/LDC/2020/0206**

HMCTS Code : **P:PAPERREMOTE**

Property : **Manor Court, Manor Gardens,
Gunnersbury Avenue, London W3
8JX**

Applicant : **Tulsesense Limited**

Representative : **Drivers & Norris Limited**

Respondents : **The leaseholders of the 28 flats at:
Block 1-7A, Block 8-12A, Block 13-
18A and Block 19-24A Manor Court,
Manor Gardens, Gunnersbury
Avenue, London W3 8JX**

Type of application : **An application for dispensation
from the consultation
requirements of s.20 Landlord and
Tenant Act 1985**

Tribunal member : **Judge D Brandler
Mr A Fonka MCIEH, CEnvH, M.Sc.**

**Date and venue of
hearing** : **10 Alfred Place, London WC1E 7LR**

Date of decision : **12th July 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing 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 it was not practicable and no-one requested the same and all issues could be determined on paper. The documents that I was referred to are in a bundle of 98 pages, the contents of which we have noted. The order made is described at the end of these reasons.

Decision

1. The Tribunal grants the applicant dispensation from the statutory consultation requirements in respect of works required Manor Court, Manor Gardens, Gunnersbury Avenue, London W3 8JX ("The property") to carry out works to repair a water leak in a water mains pipe in the car park area

Background to the Application

2. The applicant landlord seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from all/some of the consultation requirements imposed on the landlord by section 20 of the 1985 Act.
3. The applicant proposes to carry out works to repair a leak from a water mains pipe located in the car park area, which is said to be causing substantial damage to the property and posing a great health and safety risk to residents.
4. The application was first made in September 2020 but, through oversight during the Covid-19 restrictions, it has not been progressed. While the works were said to be required immediately, it appears that they have not yet been carried out, despite some ten months having passed since the application was made. Therefore, at Directions stage, it was suggested that there may be some doubt whether the works are truly urgent, and it was suggested that the applicant may wish to address this point when preparing the application for hearing.
5. Despite the passage of time, it appeared at the time Directions were issued, that there had been no consultation with leaseholders, although it is said that a scope of works has been obtained from a contractor and that leaseholders have been informed of the issue and supplied with the quote for repair. It was suggested when Directions were issued that the applicant may wish to address this issue when preparing the application, including a (truncated) consultation process with the leaseholders, pending the tribunal's ultimate determination.

6. On 11th May 2021 the Tribunal wrote to the applicants asking for clarification. Specifically:
1. *Whether the dispensation application is still required, given the time that has passed since September?*
 2. *Has any consultation been carried out with leaseholders regarding the proposed works, in any event? If so, please provide details; and*
 3. *Have any works been carried out to carry out the necessary repairs? If so, again, please provide details.*
7. A response was received from Ms Kanwal Parveen of Drivers Norris, by email on 18/05/2021, as follows:
1. *Yes it is still required.*
 2. *No, not yet.*
 3. *No works have been carried out.*
- I kindly request the Judge to consider this application as a matter of urgency and approve dispensation from consultation as these works are imminent”*
8. No more detail is provided as to why, if the works had been so urgent in September 2020, they had not yet been carried out, and why no consultation process had been commenced.
9. A quotation for works is included in the application dated 1/10/2020 from All Fix Property Services [79-80] with an estimated cost of £16,895.00.

The Property

10. Manor Court is a four storey Victorian building comprised of four blocks comprising Block 1-7A, Block 8-12A, Block 13-18A and Block 19-24A. Originally housing 24 flats, a further 4 flats were added at a later stage.
11. The Applicant is the freehold owner of the property. The leases of each flat are said to be on the same terms. A specimen lease has been provided.

The leaseholders' case

12. None of the leaseholders have objected to this application. The applicant has confirmed compliance with the Directions on service by email dated 18/05/2021

Reasons for Decision

13. 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.
14. 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 applicant, the Tribunal determines the dispensation issues as follows.
15. 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.
16. 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.
17. The leading authority in relation to s.20ZA dispensation requests is *Daejan Investments Ltd v Benson* [2013] 1 WLR 854 (“Benson”) in which the Supreme Court set out guidance as to the approach to be taken by a tribunal when considering such applications. This was to focus on the extent, if any, to which the lessees were prejudiced in either paying for inappropriate works or paying more than would be appropriate, because of the failure of the landlord to comply with the consultation requirements. In his judgment, Lord Neuberger said as follows;
 44. Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements.

45. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the Requirements, 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 – ie as if the Requirements had been complied with.
18. 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.
19. The tribunal is of the view that, taking into account that there were no objecting leaseholders, it could not find prejudice to any of the leaseholders of the property by the granting of dispensation relating to the works required to repair leaking water pipes set out in the application.
20. There is evidence to indicate that the replacement of the water pipes to the car park is urgent and that delay could significantly increase the potential risk of damage to the property from the existing leak, although it was not clear why the works had not been carried out to date, or why no consultation had been commenced in the meantime.
21. We therefore make the following conditions of such dispensation
22. The applicant shall be responsible for formally serving a copy of the tribunal's decision on all leaseholders in the 28 flats. Furthermore, the applicant 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, leaseholders who have not returned the reply form may view the tribunal's eventual decision on dispensation and their appeal rights.

Judge D Brandler

12th July 2021

APPENDIX 1
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.

‘;

APPENDIX 2
RELEVANT LEGISLATION

Landlord and Tenant Act 1985

20ZA. Consultation requirements: supplementary

- (1) Where an application is made to the appropriate 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.

Service Charges (Consultation Requirements) (England) Regulations 2003.

Part 2 - consultation requirements for qualifying works for which public notice is not required

Notice of intention

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—
 - (a) to each tenant; and
 - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall—
 - (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
 - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
 - (c) invite the making, in writing, of observations in relation to the proposed works; and
 - (d) specify—

- (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period;
and
 - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

- 2.** (1) Where a notice under paragraph 1 specifies a place and hours for inspection—
- (a) the place and hours so specified must be reasonable; and
 - (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

- 3.** Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

- 4.** (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a

recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—
 - (a) from the person who received the most nominations; or
 - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
 - (c) in any other case, from any nominated person.

- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—
 - (a) from at least one person nominated by a tenant; and
 - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
 - (a) obtain estimates for the carrying out of the proposed works;
 - (b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—
 - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
 - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

- (c) make all of the estimates available for inspection.
- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
 - (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
 - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
 - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
 - (a) each tenant; and
 - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—

- (a) specify the place and hours at which the estimates may be inspected;
 - (b) invite the making, in writing, of observations in relation to those estimates;
 - (c) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
- (11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—
- (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
 - (b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.