



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

Case Reference : **LON/00AW/LDC/2023/0022**

Property : **2-3 Egerton Gardens, London SW3 2BS**

Applicant : **The Wellcome Trust**

Representative : **Savills**

Respondents : **Various as per the attached schedule**

Representative : **None**

Type of Application : **Dispensation from consultation requirements under section 20ZA Landlord and Tenant Act 1985 (“the Act”)**

Tribunal Member : **Mr Charles Norman FRICS Valuer Chairman**

Date of Decision : **26 September 2023**

Determination by Written Representations

DECISION

Decision

1. The application for dispensation is **GRANTED IN PART** without conditions.

Reasons

Background

2. Application to the Tribunal was made on 18 January 2023 for a dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) (set out in the appendix). The subject matter was (i) replacement of a fire alarm control panel, (i) temporary fire alarm works and (iii) the cost of a waking watch.
3. Directions were issued on 20 March 2023 that the matter be dealt with by written representations unless any party made a request for an oral hearing, which none did. The directions required publicity to be given to the application in the block. In addition, the respondents were invited to respond to the application.

The Property

4. From Google Maps, the property is a Victorian terraced house in Knightsbridge converted into flats. The Tribunal did not inspect the property.

The Respondents’ leases

5. A sample lease was supplied, but the tribunal makes no finding as to payability or reasonableness of the costs to be incurred as that is outside the scope of this application. The Tribunal has jurisdiction to make such determinations under sections 19 and 27A of the Act upon separate application.

The Applicant’s Case and Nature of the Works

6. The basis of the application were costs incurred on an emergency basis to replace the fire alarm control panel that had failed. It was said to be irreparable being of obsolete design. Whilst awaiting installation a temporary manual fire alarm was installed. During that period a waking watch was employed. The application and bundle were poorly presented for a professional managing agent, unpaginated and omitting full copies of the objectors’ cases. These I had to obtain from correspondence to the Tribunal. Further, the application form does not specify precisely the dispensation sought with reference to invoices. However, it is clear that the relevant invoices were as follows:

KM Security Solutions 31.10.2022	£10,749.40
KM Security Solutions 30.11.2022	£10,602.14
Lantern Fire & Security 17.11.2022	£11,244.00
Lantern Fire & Security 19.11.2022	£1,464.00

7. It appears that on 27 March 2023 the leaseholders were notified of the application as required by the Directions.

The Respondents' Cases

8. Three respondents objected to the application.
9. Dr G Knecht complained that the waking watch arrangements were excessive. He also complained about the appearance of the new fire alarm hardware.
10. Mr Chaudry and Mrs Herrman produced a joint submission which may be summarised as follows. They opposed the application because the residents would have wished to consider national guidance on waking watches, including alternatives and to decide on whether a waking watch was necessary. As this was in place for 22 days, the residents would have wished to explore alternative fire alarm panels. Account should also have been taken of the presence of fire alarms within individual flats and whether certain flats were empty. These objectors also sought an order that the freeholder might not recover its costs of these proceedings. This the Tribunal treats as applications under section 20C of the Landlord and Tenant Act 1985, which is set out in the appendix below.

The Law

11. Section 20ZA is set out in the appendix to this decision. The Tribunal has discretion to grant dispensation when it considers it reasonable to do so. In addition, the Supreme Court Judgment in *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 empowers the Tribunal to grant dispensation on terms or subject to conditions.

Findings

The scope of section 20 and the waking watch

12. Section 20 Applies to “qualifying works” which is defined under section 20ZA (2) as works on a building or any other premises. The term ‘works’ is not defined. In *Paddington walk Management Ltd v Peabody trust* [2010] L&TR6, HH Judge Marshall QC held that window cleaning did not fall within the definition since “works on a building comprise matters that one would naturally regard as being “building works.””
13. The Tribunal finds that a waking watch is not “building works” and that the costs of the waking watch therefore fall outside the consultation requirements. Accordingly dispensation is not required for those costs. This does not however mean that the reasonableness and payability of the charges cannot be challenged in separate proceedings under section 19 and section 27A of the Landlord and Tenant Act 1985. Those provisions apply to all costs sought to be recovered via a service charge irrespective of whether or not the consultation requirements are engaged.

The Fire Alarm Works

14. The Tribunal finds that the fire alarm works, including the temporary works, were urgent, and that the applicant has acted reasonably in seeking that dispensation. No evidence of lower alternative quotes was provided by objectors and there is therefore no evidence before the Tribunal in this application that any respondent has been prejudiced by the absence of the consultation procedure. The Tribunal therefore grants dispensation unconditionally in respect of the works from Lantern Fire & Security as set out on the two invoices referenced above.

15. As stated above, this application does not concern the issue of whether any service charge costs have been reasonably incurred or are payable. The residential leaseholders continue to enjoy the protection of sections 19 and 27A of the Act.

Applications for orders under section 20C of the Act from Mr Chaudry and Mrs Herrman

16. Mr Chaudry and Mrs Herrman have been partially successful in that dispensation was not granted for the waking watch. Having regard to that and the conduct of the parties the Tribunal determines that not more than half of the landlord's costs of the application may be recovered via the service charge in respect of those objectors. However, the Tribunal makes no finding in these proceedings as to whether the lease allows the recovery of such costs.

Charles Norman FRICS
Valuer Chairman

26 September 2023

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.

Appendix

Section 20ZA Landlord and Tenant Act 1985

(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.

(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.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(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.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

20C Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court [F2, residential property tribunal] or leasehold valuation tribunal [F3 or the First-tier Tribunal], or the [F4 Upper Tribunal], or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to [F5 the county court];

[F6 (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;]

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

[F7 (ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;]

(c) in the case of proceedings before the [F8 Upper Tribunal], to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to [F5 the county court].

(3)The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.]

Schedule of Lessees

Mr Ehtizaz Chaudry Flat 6

Mr & Mrs Herrmann Basement Flat 2

3A Egerton Gardens Ltd Basement Flat

Ms Natalia Sysueva Flat 1

Mr & Mrs Herrmann Flat 2

Alison Jackson Flat 3

Richard Buckley Nelson and Visagini Nelson Flat 7

Christo & Victoria Iliev Flat 9

Dr G W Knecht & Dr J E Grundy Flat 11/12

Mr & Mrs Herrmann Ground Floor Flat 2