FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal reference	**:**	**CAM/26UH/LDC/2022/0036**
HMCTS code (audio, video, paper)	**:**	**P: PAPER REMOTE**
Property	**:**	**Vista Tower, Southgate House, Southgate, Stevenage SG1 1H**
Applicant	**:**	**Grey GR Limited Partnership**
Respondents	**:**	**The leaseholders**
Proceedings	**:**	**Dispensation with consultation requirements**
Tribunal members	**:**	**Judge Ruth Wayte**
Date of decision	**:**	**31 January 2023**

DECISION

Covid-19 pandemic: description of hearing

This application has been determined on the papers. A face-to-face hearing was not held because none was requested and I considered that a paper determination was consistent with the overriding objective. The applicant provided the bundle for the determination of 750 pages.

Direction for service

By 10 February 2023 the applicant shall send a copy of this decision to all Respondents.

Decision (please see explanatory note below)

(1) The tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 (the "1985 Act") to dispense with all the consultation requirements in relation to the internal fire compartmentation works described in paragraphs 10-12 of the applicant's statement of case dated 22 November 2022 ("the internal works").

(2) The dispensation referred to above is conditional on the applicant by 28 February 2023 and at reasonable periods thereafter (no less frequently than every 6 months if action is to be taken, until resolution), providing to the respondents a reasonable summary of all steps it has taken or is proposing to take to recover the cost of the required remedial works from any third party. For the avoidance of doubt, this paragraph does not oblige the applicant to disclose any document which is covered by any form of legal professional privilege. Non-disclosure of such documents will not constitute non-compliance with this paragraph.

(3) The tribunal orders under section 20C of the 1985 Act that all the costs incurred by the applicant in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by Mr and Mrs Baldwin of Apartment 2.

(4) The tribunal also orders under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the liability (if any) of Mr and Mrs Baldwin to pay any administration charge in respect of the costs incurred in connection with these proceedings is extinguished.

Explanatory note

This decision relates solely to the statutory consultation requirements, as explained below. It does not concern the issue of whether any service charge costs for the relevant works will be reasonable or payable. Any such issue might be the subject of an application by the landlord or leaseholders in future under section 27A of the 1985 Act.

Application

1. On 22 November 2022, the applicant landlord, represented by J B Leitch Limited, applied under section 20ZA of the 1985 Act for a determination retrospectively dispensing with the statutory consultation requirements in respect of qualifying works to remedy defective internal compartmentation, part of a series of fire safety works to the Property for which dispensation had also been provided by the tribunal on 27 June 2022 under case reference number CAM/26UH/LDC/2021/0053. By sections 20 and 20ZA of the 1985 Act, any relevant contributions of the respondents through the service

charge towards the costs of these works would be limited to a fixed sum (currently £250) unless the statutory consultation requirements, prescribed by the Service Charges (Consultation etc) (England) Regulations 2003 (the "Regulations") were: (a) complied with; or (b) dispensed with by the tribunal. In this application, the only issue for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements and if so on what terms.

Procedural history

2. On 5 December 2022 the tribunal issued directions. These required the applicant to by 19 December 2022 send to each of the leaseholders (and any residential sublessees) copies of the application form and documents enclosed with it and the directions and display copies in a prominent place in the common parts of the Property. That date was subsequently extended to 22 December 2022 and the applicant's representative confirmed that they had complied with this direction by that date. The directions included a reply form for any respondent leaseholder who objected to the application to return to the tribunal and the applicant. Any such objecting leaseholder was to respond by 16 January 2023. The applicant was permitted to produce a reply.

3. On 10 January 2023, Mr Baldwin replied on behalf of himself and his wife. He provided a statement summarising his concerns, which appear to be on the terms of the agreement rather than the extent of the works. He indicated that he was willing to consent to the application subject to conditions, which are set out in more detail below. He indicated that he did not wish to attend a hearing.

4. On 12 January 2023 the tribunal also heard from Mr Ian Mclay who said he was unable to respond by 16 January 2023. The applicant's representative sent an email dated 13 January indicating that they were prepared to agree a reasonable extension of that deadline but nothing further was received. The application has therefore been considered on the basis that Mr and Mrs Baldwin are the only leaseholders who object or at least have notified the tribunal and the applicant of that fact.

5. On 23 January 2023 the applicant produced a reply in their electronic bundle of 750 pages.

The Property and Leases

6. The property was originally built in or about 1958 for office use when it was known as Southgate House. Between 2015 and 2016 the façades and interior underwent substantial refurbishment to convert the property to residential use and it was renamed Vista Tower. The Applicant's Statement of Case states that the block incorporates 73

residential apartments. The topmost habitable floor is approximately 45.9m from ground level.

7. The applicant landlord was registered as the proprietor of the freehold title on 24 July 2018.

8. The apartments are subject to long residential leases. A sample lease was annexed to the Statement of Case. The applicant submitted that it was entitled to demand service charges under the terms of the lease in respect of the works, subject to the leaseholder protections contained in the Building Safety Act 2022.

Background

9. Following the Grenfell Tower tragedy in 2017, both landlords and Government have been engaged in the process of assessing the fire risk of similar high-rise buildings and arranging for remedial work in respect of any concerns. Funds were set up by Government to help leaseholders with the cost of the works and the Building Safety Act was passed on 28 April 2022 with further safeguards. Unfortunately, issues with the external façade to Vista Tower had already been identified as detailed in the earlier dispensation application. Works to the exterior are yet to commence and are now the subject of proceedings brought by the Secretary of State for the Department for Levelling Up, Housing and Communities.

10. In 2021 the applicant instructed Tenos to undertake a sample intrusive compartmentation survey which identified defects requiring remediation. Tenos produced a technical note dated 2 September 2021 recommending making good the breaches in fire compartmentation within the areas the landlord is responsible for maintaining, the means of escape routes and the service risers.

11. The applicant subsequently instructed Tuffin Ferraby Taylor LLP ("TFT") to seek tenders for the proposed internal works. Only two of the five invited contractors were willing to tender. In September 2022 TFT recommended that the offer from Miller Knight Resource Management Limited offered the best value and the shortest programme. On that basis, the applicant proceeded to formally instruct Miller Knight on 8 November 2022 to carry out the internal works.

12. On 10 November 2022 the leaseholders were sent a letter providing an update in respect of the ongoing building Safety Fund application in respect of the external works and notifying them of the required internal compartmentation works which were to commence from 14 November 2022. A summary of those works was provided and the leaseholders were advised of the applicant's intentions to apply for dispensation of the consultation requirements "*to ensure these issues*

are rectified as soon as possible". Observations were invited in response to that letter.

Consultation

13. The relevant consultation requirements (for procurement of qualifying works for which public notice was not required) are set out in Part 2 of Schedule 4 to the Regulations. These requirements are summarised in *Daejan Investments Limited v Benson and Ors* [2013] UKSC 14 at [12] and fall into 4 stages: a notice of intention to do the works, seeking of estimates, notices about estimates and a notification of reasons (if required). The applicant seeks retrospective dispensation from all of the requirements, primarily on the basis that it has urgently instructed the contractor to proceed with the internal works.

Law on dispensation

14. Under section 20ZA of the 1985 Act, the tribunal has jurisdiction to dispense with all or any of the consultation requirements in relation to any qualifying works "*…if satisfied that it is reasonable…*" to dispense with the requirements. In *Daejan*, Lord Neuberger for the majority observed [at 40-41] that it would be inappropriate to interpret this as imposing any fetter on the exercise of the jurisdiction beyond what can be gathered from the 1985 Act itself and any other relevant admissible material. The circumstances in which applications for dispensation are made: "*…could be almost infinitely various, so any principles that can be derived should not be regarded as representing rigid rules*." He confirmed [at 54] that the tribunal: "*…has power to grant a dispensation on such terms as it thinks fit - provided, of course, that any such terms are appropriate in their nature and their effect*."

15. By reference to sections 19 to 20ZA of the 1985 Act, Lord Neuberger said [at 43] that: "*…the obligation to consult the tenants in advance about proposed works goes to the appropriateness of those works, and the obligations to obtain more than one estimate and to consult about them go to both the quality and the cost of the proposed works*." Given that purpose, it was indicated [at 44] that the issue on which the tribunal should focus when entertaining an application for dispensation: "*…must be the extent, if any, to which the tenants were prejudiced … by the failure … to comply …*" and [at 45]: "*…in a case where it was common ground that the extent, quality and cost of the works were in no way affected by … 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)…*"

16. Lord Neuberger referred [at 65] to *relevant* prejudice, saying the only disadvantage of which tenants: "*…could legitimately complain is one which they would not have suffered if the Requirements had been fully complied with, but which they will suffer if an unconditional*

dispensation were granted." He noted [at 67] that, while the factual burden of identifying some relevant prejudice would be on the tenants: "*…the landlord can scarcely complain if the LVT views the tenants arguments sympathetically, for instance by resolving in their favour any doubts whether the works would have cost less (or, for instance, that some of the works would not have been carried out or would have been carried out in a different way), if the tenants had been given a proper opportunity to make their points*." Further guidance on terms of dispensation is at [68].

The objections

17. As stated above, only Mr Baldwin (a retired quantity surveyor) submitted a statement in response to the application. There was no indication that he was representing other leaseholders in the Property (other than his wife). He pointed out that the first notification about the internal works was made on 10 November 2022, after the contract had been entered into. He considered that the basis of that contract was commercially unsound and that the leaseholders would be prejudiced as a result. He submitted that the applicant has shown total disregard for the section 20 requirements.

18. He was prepared to consent to the application on condition that none of the costs incurred by the applicant formed part of the service or administration charge, that the applicant indemnify the respondents up to £25,000 plus VAT to enable them to obtain advice on the contract, that the maximum amount chargeable should be capped at the lesser of the contractors agreed final sum or contract sum and that information should be provided by the applicant as to the steps it has taken to require third parties to contribute to the cost of the works.

19. In response, the applicant submitted that Mr Baldwin's concerns did not evidence any prejudice, financial or otherwise. In particular, the appropriate route to challenge any service charge demanded remained open under section 27A of the Landlord and Tenant Act 1985.

20. They also argued that his concerns were really about the fact that he had been deprived of the ability to participate in consultation as opposed to evidence of prejudice over and above that fact.

21. In the absence of any identified prejudice, they submitted that dispensation should be granted unconditionally. In response to Mr Baldwin's proposed conditions, the applicant objected to all of them apart from reasonable on-off information about third party contributions. In particular, there should be no restriction as to the ability to recover the costs of the application from the leaseholders, there was no evidence that Mr Baldwin would have sought expert advice in respect of the works and the restriction of the cost of the works was inappropriate and/or outside the tribunal's jurisdiction.

The tribunal's decision

22. Although Mr Baldwin's argument that the applicant has had plenty of time to comply with consultation in respect of the internal works has some force, the tribunal is prepared to grant dispensation in respect of the internal works. While their urgency appears to have been encouraged by the Secretary of State's intervention, there appears to be no objection as to the need for the works. Mr Baldwin's concerns as to the failure to agree a sufficiently tightly drawn contract can be considered as part of any section 27A application, should the leaseholders be asked to bear any part of the cost of the works in due course.

23. The scope of the works is sufficiently clear as set out in the application and accompanying documents, by way of contrast with the non-specific Design and Build contract proposed in respect of the external remediation works.

24. As to the conditions, the tribunal considers that these works are different to the much less tangible external remediation works which were the subject of the earlier dispensation application. Given that the scope is much clearer, the tribunal does not agree that it is reasonable to allow an indemnity for expert advice in this case. Similarly, a condition as to the maximum amount chargeable is inappropriate in the absence of actual prejudice. Again, the appropriate route for challenging the cost of the works is via a section 27A application, if necessary.

25. The applicant has agreed to provide information about any third-party contribution and the tribunal agrees it is reasonable to make this a condition of the dispensation, with some need to update the leaseholders more than once. The tribunal considers that Mr Baldwin has effectively made an application to restrict the recovery of the applicant's costs and that in all the circumstances, it is just and equitable to make an order under section 20C and/or paragraph 5A as "the price for the indulgence" sought by the applicant in making this application. In the absence of any evidence that Mr Baldwin was representing a wider group of leaseholders, this order will be limited to his liability and that of his wife.

Name: Judge Ruth Wayte **Date:** 31 January 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).