



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

Case Reference : CHI/00LC/LDC/2023/0072

Property : Spembly Works, 13 New Road Avenue,
Chatham, Kent ME4 6AZ

Applicant : Spembly Ltd

Representative : Warren Dann

Respondent : Shokar Properties Limited (Flat 4)
Darren Johnson (Flat 2)
Andrew Christie (Flat 5)
Paul Kendrick and M Burningham (Flat 9)
Olumuyiwa Olufote (Flat 14)
Mohammad N Khan (Flat 20)

Representative : Carol Ings (Darren Johnson)

Type of Application : To dispense with the requirement to
consult lessees about major works section
20ZA of the Landlord and Tenant Act 1985

Tribunal Member : Judge J Dobson

Date of Directions : 4th October 2023

DECISION

Summary of the Decision

- 1. The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act in respect of major works, being removal of glass and installation of steel security screening, including ancillary matters. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

The application and the history of the case

2. The Applicant applied by application dated 30th June 2023 for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) from the consultation requirements imposed by Section 20 of the Act.
3. The property Spembylly Works, 13 New Road Avenue, Chatham, Kent ME4 6AZ (“the Property”) was described as a “Converted building to 33 individual flats currently under prohibition notice.” A detailed explanation of the situation at the Property, including recent vandalism, was given. The works intended related to the removal of glass at a quoted cost of £74,760.00 (inclusive of VAT) but where the Applicant sought to allow for £80,000 (inclusive of VAT) to allow for any contingencies and inflation and for boarding at a quoted cost of £115,315.20 but where the quote was obtained in October 2022, so the Applicant sought to allow an additional potential 30%.
4. Dispensation was described as being sought because the Property is in a state of serious disrepair and boarded up on the ground floor only but with Medway Council applying to the Magistrates Court to enforce the removal of all the glass in the Property and the undertaking of further boarding up to and including the third floor. It was said at that time that the Applicant was due to be in court on 4th July 2023 and that Medway Council were insisting that the works are actioned within 28 days of the Magistrates Court giving directions.
5. It was said did not give sufficient time to run the consultation process. Reference was also made to what was described as “very real threat of risk to life”.
6. The Tribunal gave Directions on 22nd August 2023, explaining that the only issue for the Tribunal is whether, or not, it is reasonable to dispense with the statutory consultation requirements and is not the question of whether any service charge costs are reasonable or payable. The Directions Order listed the steps to be taken by the parties in preparation for the determination of the dispute, if any. The Directions further stated that Tribunal would determine the application on the papers received unless a party objected in writing to the Tribunal within 7 days of the date of receipt of the directions. Variation of the

Directions was required to extend times for certain steps to be undertaken.

7. However, the Respondents listed objected both to the application itself and to the application being determined on the papers. Further Directions were therefore given dated 6th September 2023. It was consequently necessary to list a hearing and appropriate to reduce the class of Respondent to those who had actively objected. Certain other matters were also addressed, including to resolve any potential issue that any lessees may not have received the documents.
8. Additional Directions were given on 26th September 2023.
9. Separately, on 25th September 2023, the Applicant applied to, it was suggested, vary the application, although the reasons stated a desire for the Tribunal to inform the Applicant whether it should withdraw the application or the Tribunal would decide on the basis of a lower sum of £39,983.82 (although there was not space on the form for all of the wording sought to be included to in fact be visible). By email dated 26th September 2023, Mr Christie objected to that application. However, those were not seen by any Judge prior to the hearing listed.

The Law

10. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.
11. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation “if satisfied that it is reasonable to dispense with the requirements”.
12. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.
13. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were “a means to an end, not an end in themselves”.
14. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a

consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).

15. Where the extent, quality and cost of the works were in no way affected by the lessor's failure to comply, Lord Neuberger said as follows:

"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- i.e. as if the requirements had been complied with."

16. The "main, indeed normally, the sole question", as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.
17. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.
18. If dispensation is granted, that may be on terms.
19. There have been subsequent decisions of the higher courts and tribunals of assistance in the application of the decision in *Daejan* but none are relied upon or therefore require specific mention in this Decision.

The Hearing

20. The hearing was conducted remotely by video, with the Judge sitting alone and at Havant Justice Centre.
21. Three Directors of the Applicant attended the hearing, Mr Dann, Mr Wicking and Mr Laney. There was no attendance by any of the lessees.
22. The Tribunal identified the documents seen, including the objections received by lessees, noting that certain of the objections asserted negligence and or breach of lease by the Applicant, which included reference to a period of approximately 18 months passing between a break- in having been reported in early 2022 and the current time. The Tribunal further noted that two documents made reference to work commencing imminently to be undertaken by Medway Council.
23. The Tribunal additionally noted that the query that certain of the lessees may not have received documentation but that nothing further had apparently been heard in relation to that.
24. The Applicant explained through its directors who attended that the Applicant funded boarding up of the ground floor with wood. However,

there was subsequently a break- in (or more than one) and dialogue with Medway Council about securing the Property, including the asserted difficulty of a lack of funds due to non-payment of service charges by lessees. Mention was also made of previous proceedings before the Tribunal in respect of potential works to enable the lifting of the Prohibition Notice which had previously been issued by the Council in respect of the Building.

25. An explanation was given in response to the Tribunal's query as to the date of the quote for metal screening, October 2022 so nearly a year ago, that the Applicant was liasing with STG- the building control company- and had considered it appropriate to obtain a quote. It was said that STG also obtained one. However, there was no work which ensued.
26. It was said on behalf of the Applicant that it had only been three months or so ago, a little before the application was made the Tribunal perceived, that the Council had required the Applicant to put metal screening or similar in place and proceedings were commenced in the Magistrates Court. It was re-iterated that it was essentially for that reason that the application for dispensation was made, the Applicant considering that it could not look to collect the service charges required to pay for the work unless and until dispensation was granted (or the consultation had ended presumably) and that it needed to do so swiftly if it was to be able to undertake works as required.
27. No challenge was made to that, there being no other attendees, and so the Tribunal treated the information as correct, not it might be said that those matters had any direct effect on the determination reached.
28. It was confirmed on behalf of the Applicant that only one quote for the removal of glass and related work and one quote for the steel screening had been obtained. No alternative quotes had been provided by any of the lessees. The steel screening quote covers screening to all 6 storeys of the Property.
29. In respect of works being due to be commenced by Medway Council, the directors of the Applicant explained that to be correct. It was added that the Applicant had made the case management application mentioned above. That sought to vary the application, or rather as expressed to seek guidance about the application in light of a different amount of cost.
30. It was established that cost of £39,983.82 plus VAT, as mentioned in the application to vary, is the cost which Medway Council will incur to undertake works it now intends to undertake, the works which two Respondents had referred to. That will relate to the ground floor and the next three floor, so those which the Council had required the Applicant to attend to, but will not relate to the top two floors. It was explained that the Council will pay for the work, and it is fully expected will then seek to recover the cost from the Applicant, which will in turn

to obtain the funds from the lessees. The Tribunal observes that is not major work undertaken by the Applicant.

31. In response to the Tribunal's enquiry, the Applicant accepted that it would not therefore undertake work by way of metal screening to the four floors due to be attended to by the Council provided that the Council undertook that work or possibly any of the work in respect of which dispensation was sought. However, it was explained the Applicant might still wish to undertake similar work to the upper two floors and could not rule out screening work by it to the lower floors. The Applicant expressed concern with risk to life and wished to proceed with the application in the event that work may be required.
32. The Applicant did not seek a determination of its case management application and no determination of it was made.

Consideration

33. The Applicant is the lessor of the Property. The freeholder is a different company and is not involved in this application.
34. The lease of Flat 33 has been provided ("the Lease"). The Tribunal understands that the leases of the other Flats are in the same or substantively the same terms. In the absence of any indication that the terms of any other of the leases differ in any material manner, the Tribunal has considered the Lease.
35. The Applicant has various obligations under the Lease, principally set out in clause 6 and Schedule 4, including keeping the main structure of the Property in repair, complying with notices and similar of a competent authority and discharging such other obligations and functions as considered necessary or expedient. The lessee is required pursuant, in particular, to clause 5.1, to contribute to the costs and expenses of the Applicant complying with its obligations.
36. Accordingly, the Tribunal is satisfied that the works fall or are at least likely to fall within the responsibility of the Applicant and are at first blush chargeable as service charges.
37. The Tribunal struggled a little with any implication that the Council had significantly altered its position in the immediate period before this application or sprung the need to get the metal boarding in place on the Applicant. The Tribunal considered it more likely that any Court proceedings would have followed efforts to resolve matters, expression of dissatisfaction with lack of resolution and advance notice that proceedings may be taken. It was not wholly clear that there was no earlier point than the commencement of proceedings at which it was quite apparent that the Applicant needed to progress work and that consultation could not at least have been commenced, whether in a formal or informal manner. However, given the nature of the objections raised and those not going to the relevant test and given the lack of any

attendance by a lessee, the Tribunal is mindful that those matters did not need to be explored in detail and so were not so explored. The Tribunal makes no findings on the basis of the limited information before it.

38. The Tribunal noted the objections which referred to delay with works. As the above paragraph indicates, there appeared some general merit in the concerns expressed about delay but nothing on which any specific finding could be made. In any event, the Tribunal found nothing in the limited comments made which demonstrated that such delay without further provided a proper basis not to grant dispensation from consultation.
39. None of the Lessees have therefore asserted that any prejudice has been caused to them. Whilst it is unclear to what extent urgency remains, the Tribunal finds that nothing different would be done or achieved in the event of a full consultation with the Lessees, except for potential delay. The Tribunal finds that the Respondents have not demonstrated that they have suffered any prejudice by the failure of the Applicant to follow the full consultation process.
40. This Decision falls to be made in the odd circumstance that it may well be that the work for which dispensation is sought is not required to be undertaken by the Applicant in the event and the particularly odd circumstance that the Council is to undertake a loosely equivalent set of work to much of the Property. However, the Tribunal considers that the work by the Council is relevant to any demands for payment of service charges to fund such works as the Applicant may subsequently decide to undertake but is not directly relevant to the question of grant of dispensation.
41. The Tribunal considered whether the question of grant of dispensation was in effect a purely academic exercise, the answer to a question of no practical relevance. However, the Tribunal accepted that it is possible that the work, or some of it, may be required and so concluded that the question is not a purely academic one and so the application can still properly be determined. Hence, the Tribunal does that.
42. The Tribunal finds that it is reasonable to dispense with all of the formal consultation requirements in respect of the major works to the Property.
43. The Tribunal notes that the Applicant sought dispensation for the works indicated and up to amounts set out. However, the Tribunal does not consider it appropriate to address dispensation in that manner in this case. Rather the dispensation granted is for specified major works. The question of cost of those and variation of the those is a separate matter and the Tribunal considers that, subject to the works being those or part of those for which dispensation has been granted and not extending into matters not part of or ancillary to those works, any variation in cost is not relevant other than in respect of any

requirement to consider the service charges which arise and in the event that any application in respect of those is subsequently made.

44. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the major works. The Tribunal has made no determination on whether costs involved in such works are payable or reasonable. If a Lessee wishes to challenge the payability or reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 will need to be made at an appropriate future time.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.