



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

Case reference	:	LON/00BG/LDC/2023/0192
	:	P:Paperremote
Property	:	Ontario Tower New Providence Wharf London E14 9PQ
Applicant	:	Ballymore Ontario Limited (1) Blazecourt Limited (2)
Representative	:	Charles Russell Speechly LLP
Respondents	:	The leaseholders named in the application
Type of application	:	To dispense with the consultation requirements under S.20 Landlord and Tenant Act 1985
Tribunal member	:	Mrs E Flint FRICS
Date and venue of determination	:	6 December 2023 Remote on the papers

DECISION

This has been a remote hearing on the papers which has been consented to by the Applicant and the Respondents. A face to face hearing was not held because it was not practicable and all the issues could be determined on the papers. The documents that I was referred to were in an electronic bundle of 1171 pages, the contents of which I have recorded.

Decision of the tribunal

- (1) The Tribunal grants dispensation from all of the consultation requirements under S.20 of the Landlord and Tenant Act 1985 in relation to the additional costs incurred in respect of the installation of a new Automatic Opening Vent System (AOV) subject to the conditions set out below.
- (2) The question of reasonableness of the works or cost was not included in this application, the sole purpose of which is to seek dispensation.

The Background

1. The application under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) was made by the Charles Russell Speechlys LLP on behalf of the applicants on 24 July 2023.
2. The application concerned the overspend on the Automatic Opening Vent system for a 29 storey tower comprising 295 apartments, a hotel and a commercial unit. Full consultation had been undertaken in relation to the original specification. However, following the appointment of N G Bailey, but before the contractor commenced work a further survey was undertaken which indicated that the original scope of works was insufficient. Consultation was not undertaken in respect of the overspend of £170,720. Directions were issued on 14 August, amended on 22 August and further amended on 2 October setting out a timetable for the case to be dealt with on the papers and requiring the applicant to prepare bundles to include statements
 - (i) Setting out the full grounds for the application, including all of the documents on which the landlord relies and copies of any replies from the tenants;
 - (ii) The Leaseholders were asked to confirm by 9 October 2023 whether or not they would give their consent to the application.
 - (iii) In the event that such agreement was not forthcoming the leaseholders were to state why they opposed the application; and provide copies of all documents to be relied upon.
3. The Leaseholders were informed in the Directions issued by the Tribunal that the question of reasonableness of the works or cost was not included in this application, the sole purpose of which is to seek dispensation.

The Evidence

4. On behalf of the Applicants it was explained that the freehold of the Building is owned by Edwardian Canary Wharf Hotel Limited. Ballymore Ontario Limited (Ballymore) is the leasehold proprietor having been granted a lease for 1,050 years from 27 October 2011. Ballymore has granted sub leases of the apartments within the building. Subsequently Ballymore granted an intervening lease to Blazecourt Limited, the second applicant, for 1,000 years from 23 March 2016 subject to the subleases.
5. The first applicant was responsible for commissioning the work. The AOV system was said to have an expected operating life of 15 years: it had been installed in 2006. There had been ongoing problems with the AOV since certainly 2019. In February 2021 new door closers were installed. By June 2021 the site facilities manager raised concerns regarding the doors and in July 2021 major issues were identified. In July 2021 a fire patrol was established so that personnel could open the AOV doors manually if required.
6. Ballymore undertook site investigations during August and September 2021. The scope of the works was produced in October 2021 and on 3 November 2021 the leaseholders were advised of the fire patrol having been appointed in July.
7. The first stage of the consultation for the works was issued on 19 December 2021. It was stated that no leaseholder recommended any alternative contractor. The second stage notice was issued on 31 January 2022. Two estimates were received in the sums of £886,391.35 (Certus) and £701,856.11 (N G Bailey). N G Bailey were appointed as their quotation was the lower of the two. Before commencing work N G Bailey undertook a more detailed survey and concluded that the original scope of the works was insufficient. The revised total cost of the works was £886,343.
8. The works commenced on 11 July 2022. The replacement AOV was fully operational from 17 October 2022. Following the installation of the new door openers and testing the fire patrol was stood down on 19 October 2022.
9. The leaseholders were advised in November 2022 that although the overspend was £170,720 inclusive of VAT, £85,360 inclusive of VAT was in respect of containment works housing the new wiring and would be utilised as part of the replacement fire alarm system. This latter amount had already been allowed for in reserves.
10. Dispensation is being sought therefore for the overspend of £97,023 inclusive of VAT.

11. Final adjustments to the AOV were made on 6 December 2022.
12. The Applicants confirmed that they had received 78 formal responses to this application from 69 flats and the New Providence Wharf Leaseholders and Residents Association (NPWLTA). They had divided the responses into six types, all disagreeing with the application.
13. The applicants in support of their course of action stated that N G Bailey had been appointed to carry out the initial works when their survey indicated that further work would be required. The options at that point were either to start the works and seek dispensation for the overspend or halt the project and begin a new round of consultation to include all the works identified by N G Bailey.
14. A delay was not considered to be appropriate because significant costs were already being incurred due to having employed the fire patrol. The works were considered to be urgent.
15. The applicant asserted that it was for the respondents to show prejudice either because the additional works were inappropriate or that they are paying more than they would otherwise have done if full consultation had taken place in respect of the additional works.
16. The applicant asserted that the respondents had blurred the reasonableness of the costs with the lack of consultation in respect of the additional works. The matter under consideration had only been addressed briefly and was limited to not being able to make observations on the additional works or obtain alternative quotations for those works.
17. The applicant noted that N G Bailey had already been appointed and that it would have been difficult for another contractor to come onto site to carry out only the additional works. Moreover, none of the leaseholders had suggested an alternative contractor when full consultation was carried out in respect of the initial works. The respondents have not indicated what comments they would have made. The applicant stated that the respondents have not shown any loss and therefore there had been no prejudice.
18. The respondents who did not consent to the application set out their grounds in some detail. The majority took a similar view to one and another. The NWLRA provided a detailed response although not all matters strictly related to the question of whether dispensation should be granted. They raised whether the works were covered by the Building Safety Act 2022 and if so proposed that the leaseholders should be reimbursed for the costs of the works.
19. Furthermore, it was noted that the project took over 16 months from when the AOV doors were not fully functioning to completion of the works which was in their opinion an excessive amount of time and showed that the project had not been well managed.

20. The issue of the cost and effectiveness of the fire patrol was raised. It was accepted that Ballymore had agreed not to charge a project management fee in light of the poor communication between the company and the leaseholders.
21. Most respondents raised the poor management in not having a plan in place for the replacement of the AOV system since it had reached the end of its expected life expectancy. If there had been a plan it may not have been necessary to have the fire patrol in place which was expensive. Moreover, the respondents stated that they had not been provided with a detailed specification of the works and consequently were precluded from obtaining alternative quotations.
22. The majority of the observations were concerned with the timescale for the project, the cost of the fire patrol and the standard of management. It was also stated the N G Bailey had a contract to maintain the Building and should have known the state of the AOV system and what was required to ensure its safe working. It was noted that Bailey's original quotation plus the additional cost almost equated with the quotation from Certus the only other contractor to have quoted initially.
23. The respondents were of the opinion that if dispensation were granted then all the costs should be borne by the applicant and none of the costs should be collected via the service charge.

24. The Decision

25. The relevant test to be applied in an application for dispensation was set out by the Supreme Court in *Daejan Investments Ltd v Benson & Ors* [2013] UKSC 14 where it was held that the purpose of the section 20 consultation procedure was to protect tenants from paying for inappropriate works or paying an inappropriate amount. Dispensation should not result in prejudice to the tenant.
26. The Tribunal determines from the evidence before it that the applicant should be granted dispensation on terms.
27. The applicant decided not to apply for dispensation until well after the works were completed. It could have started consultation on the overspend once it became known at the commencement of the works. The applicant has chosen not to do so and did not apply for dispensation promptly. The respondents raised a number of points which relate to the management, lack of transparency and reasonableness of the works together with the cost of the fire patrol which they consider was in place for an unnecessarily long time due to the mismanagement of the project. Many of their concerns are not related to the grounds for opposing an application for dispensation.
28. The applicants may not recover their costs of this application via the service charge account: it was the applicant's own decision to proceed without consulting on the additional costs at all and indeed the company

did not inform the leaseholders of the fire patrol until some 4 months after it had been initiated. The applicant must also pay any reasonable costs incurred by the respondents in relation to this application.

29. On the evidence before it, and in these circumstances, the Tribunal considers that the application for dispensation be granted subject to the conditions above.

Name: Evelyn Flint

Date: 8 December 2023

RIGHTS OF APPEAL

1. 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.
2. 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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>
3. 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.
4. 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.
5. 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.