



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

Case Reference : **LON/00AL/LDC/2021/0053**

Property : **Flats 1 & 2 Hermes Court, 273
Greenwich High Road, SE10 8BH**

Applicant : **Freehold Mangers (Nominees) Ltd**

Representative : **Andrew Missenden
Broadlands Estate Managers**

Respondent : **Emma Harley (Flat 1) and Helen
Stone
(Flat 2)**

Representative : **None**

Type of Application : **An application under section 20ZA
of the Landlord and Tenant Act
1985 for dispensation from
consultation prior to carrying out
works**

Tribunal Members : **Mr I B Holdsworth FRICS MCI Arb**

**Date and venue of
Hearing** : **Remote on 2 August 2023**

Date of Decision : **2 August 2023**

DECISION

Decisions of the Tribunal

The tribunal determines that retrospective dispensation should be given from the consultation requirements in respect of the proposed works to renew the smoke vents (referred to as the “**Renewal Works**”) at Flats 1 & 2 Hermes Court, 273 Greenwich High Road, SE10 8BH as required under s.20ZA of the Landlord and Tenant Act 1985 (“**the Act**”) for the reasons set out below.

This application does not concern the issue of whether any service charge costs will be reasonable or payable. The leaseholders will continue to enjoy the protection of Section 27a of the Act.

The tribunal directs the Applicant to send a copy of this Decision to the leaseholders and to display a copy in the common parts of the buildings.

The application

1. The Applicant seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) to dispense with the statutory consultation requirements associated with carrying out necessary and essential Renewal Works at Flats 1 & 2 Hermes Court, 273 Greenwich High Road, SE10 8BH (the “**Property**”).
2. An application was received by the First-tier Tribunal dated 21 March 2021 seeking dispensation from the consultation requirements. Directions were issued on the 24 March 2021 to the Applicant. These Directions required the Applicant to advise all Respondents of the application and provide them with details of the proposed works including costs.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. This matter was determined by written submissions. The Applicant submitted a bundle of relevant materials to the tribunal.
5. No submissions were received from the Respondents.

The background

6. The property which is the subject of this application comprises 2 self-contained flats located in a two storey building.

7. Mr Missenden of the managing agent, Broadlands Estate Management explains in his Statement of Case that the smoke vents to block 1 and 2 located above the communal hallway were found to be defective in late 2020. Due to a faulty control mechanism the vents did not close. He explained that water ingress occurred through the open vents at times of rain resulting in damage to the interior of the communal areas.
8. The defect was reported to the managing agents by contractors following a regular inspection of the smoke vents. On receipt of the notification the managing agents sought two quotes from contractors for the remedial works. The tribunal are told the returned quotes exceeded the section 20 service charge threshold of £250 per leaseholder. The quotes are not included in the submitted bundle.
9. A Notice of Intention to undertake the works was then served on the tenants on 19 February 2021. This advised the consultation would end on 22 March 2021 some 4 weeks after the date now advised to tribunal for completion of the works.
10. No response was received from either tenant following the Notice of Intention.
11. No details of the works or selected contractor is provided by the Applicants to the tribunal. No costs of the work undertaken are given.
12. The tribunal are told the Renewal Works were completed on 24th February 2021 and the Applicants now seek retrospective dispensation from consultation requirements.
13. The Applicant contends that the Renewal Works were needed urgently to reduce the probability of damage to the building through water penetration from the failed vents.
14. The only issue for the tribunal to consider is whether it is reasonable to dispense with the statutory consultation requirements in respect of the Renewal Works.

Statutory Duties to Consult

15. The obligation to consult is imposed by Section 20 of the Act. The proposed works are perceived as qualifying works. The consultation procedure is prescribed by Schedule 3 of the Service Charge (Consultation Requirements) (England) Regulations 2003 (“the Consultation Regulations”). Leaseholders have a right to nominate a contractor under these consultation procedures.
16. The Landlord is obliged to serve leaseholders and any recognised Tenants association with a notice of intention to carry out qualifying

works. The notice of intention shall, (1) describe the proposed works, (2) state why the Landlord considers the works to be necessary, and (3) contain a statement of the estimated expenditure. Leaseholders are invited to make observations in writing in relation to the proposed works and expenditure within the relevant period of 30 days. The Landlord shall have regard to any observations in relation to the proposed works and estimated expenditure. The Landlord shall respond in writing to any person who makes written representations within 21 days of those observations having been received.

17. Section 20ZA (1) of the Act provides:

“ 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.”

18. This determination relies upon a bundle of papers which included the application, the Directions, a specimen lease, a Statement of Case and supporting documents.

19. The Supreme Court’s decision in the case of **Daejan Investments Ltd v Benson and Ors [2013] 1 W.L.R. 854** clarified the tribunal’s jurisdiction to dispense with the consultation requirements and the principles upon which that jurisdiction should be exercised.

20. The scheme of consultation provisions is designed to protect the interests of leaseholders, and whether it is reasonable to dispense with any requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose. The purpose of the consultation requirements is to ensure that leaseholders are protected from paying for works which are not required or inappropriate, or from paying more than would be reasonable in the circumstances.

21. The tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any prejudice has been suffered by any leaseholder because of the failure to consult in terms of a leaseholder’s ability to make observations, nominate a contractor and or respond generally.

22. The burden is on the Landlord in seeking a dispensation from the consultation requirements. However, the factual burden of identifying some relevant prejudice is on the leaseholder in opposing the application for dispensation. The leaseholders have an obligation to

identify what prejudice they have suffered because of the lack of consultation.

The determination

23. The tribunal is satisfied that the works were of an urgent nature, and they were for the benefit of and in the interests of both Landlord and leaseholders in the Property.
24. They noted that none of the leaseholders objected to the grant of dispensation.
25. The tribunal has made their decision on basis of the information submitted in the bundle.
26. The tribunal is aware that the bundle contains none of the following information namely, a detailed works justification, a description of the works or a confirmed cost quotation.
27. There was a demonstrated need to carry out the works urgently to obviate the risk to residents from water ingress at the property. Also, a timely start on the works was required to mitigate the extent of consequential damage to the building and ensure repair costs were minimised.
28. The tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to any failure to consult. No works cost evidence is submitted to tribunal. In the absence of this information, it is difficult to assess whether the residents suffered any financial prejudice due to the failure to consult. The rights of the Respondents to challenge the reasonableness of the incurred costs are not affected by this decision.
29. The tribunal has taken into consideration that the leaseholders have not had the opportunity to be consulted in accordance with the timetable afforded by the 2003 Regulations. In view of the circumstances under which the works became necessary the tribunal does not consider that the leaseholders, with a reduced opportunity to make observations and to comment on the works or to nominate a contractor, were likely to suffer any relevant prejudice.
30. The tribunal having considered the evidence is satisfied that it is reasonable to retrospectively dispense with the consultation requirements in this case. In the circumstances, the Tribunal makes an order that the consultation requirements are retrospectively dispensed in respect of the Smoke Vent Renewal Works at the Property,

31. **It is the Applicant's responsibility to serve a copy of the tribunal's decision on all Respondent leaseholders listed on the Application.**
32. **This decision does not affect the right of the Respondents to challenge the costs, payability or the standard of work should they so wish.**

Valuer Chairman: Ian B Holdsworth

Date: 2 August 2023

Appendix of relevant legislation

Section 20 of the Act

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long-term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenant’s being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be considered in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

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).