



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

Case reference : **LON/00BF/LDC/2023/0275**

Property : **43-54 Denmark Gardens,
Carshalton, Surrey, SM5 2JE**

Applicant : **London Borough of Sutton**

Representative : **Sutton Housing Partnership**

Respondents : **(1) Mr and Mrs Mauran (Flat 45)
(2) Mr and Mrs Fletcher (Flat 46)
(3) Mr and Mrs Stafford (Flat 48)**

Representative : **N/A**

Type of application : **For dispensation under section
20ZA of the Landlord & Tenant Act
1985**

Tribunal member : **Tribunal Judge I Mohabir**

Date of decision : **23 April 2024**

DECISION

Introduction

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) for *retrospective* dispensation with the consultation requirements in respect of the installation of major leaks behind panelling within the block of flats known as 43-54 Denmark Gardens, Carshalton, Surrey, SM5 2JE (“the property”).
2. The Applicant is the management agent and is responsible for the overall management of the property and the Respondents are the long leaseholders. The freeholder is the London Borough of Sutton.
3. The property is described as being a 3 storey purpose built block containing 12, two and three bedroom flats, 3 of which are held on long residential leases by the Respondents.
4. It appears that during the course of carrying out responsive repairs, a major leak was discovered by the Applicant’s contractor behind panelling in the block. It is alleged that this was causing damage to the building and other residents' property making the need to repair it urgent.
5. Any repairs to the property are carried out pursuant to a qualifying long-term agreement that the freeholder has with a number of relevant contractors.
6. Apparently, the Applicant consulted the leaseholders of Flat 48 and the relevant sub- contractors on 15 March 2021 and 15 December 2021 using Schedule 2 of the Service Charge (Consultation Requirements)(England) Regulations 2003 in relation to the qualifying long-term agreement and used a contractor from this panel to undertake the necessary repairs. The leaseholders of Flats 45 and 46 were not consulted on as they both completed on their Right to Buy on 11 April 2022 and they will not be charged due to s.125 limitations. The Applicant wrote to the leaseholders on 21 August 2023 to advise them of the need for the repair work, being the replacement of the copper coil stack and associated works and that it would be applying for dispensation.
7. It is the Applicant’s case that, due to the urgent nature of the works, consultation pursuant to Schedule 3 of the 2003 Regulations could not take place. The works were completed on 11 September 2023 at an estimated block cost of £4,098.68.
8. By an application dated 29 September 2023, the Applicant made this application seeking retrospective dispensation from the requirement to carry out statutory in relation to the repair works carried at the property.
9. On 9 February 2024, the Tribunal issued Directions. The Respondents were directed to respond to the application stating whether they objected to it in any way.

10. None of the Respondents have objected to the application.

Relevant Law

11. This is set out in the Appendix annexed hereto.

Decision

12. As directed, the Tribunal's determination "on the papers" took place on 16 April 2024 and was based solely on the documentary evidence filed by the Applicant. As stated earlier, no objections had been received from any of the Respondents nor had they filed any evidence.

13. The relevant test to be applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.

14. The issue before the Tribunal was whether dispensation should be granted in relation to the requirement to carry out statutory consultation with the leaseholders regarding the fire compartmentation works. As stated in the directions order, the Tribunal is not concerned about the actual cost that has been incurred.

15. Arguably, at best, the only evidence presented to the Tribunal and relied on by the Applicant regarding the urgent nature and the scope of the repairs carried out is contained in the estimate provided by the contractor, Jet Maintenance Limited, dated 4 August 2023. Taken at its highest, that evidence only established the need to replace the copper coil stack. It does not establish that the repairs were urgent and was causing damage to other parts of the building or other residents' flats as the Applicant submitted. Therefore, it is difficult to see why the Applicant could not have carried out statutory consultation with the Respondents.

16. However, on balance, the Tribunal granted the application for the following main reasons:

(a) at all material times, the Tribunal was satisfied that the Respondents have been kept informed of the need, scope and estimated cost of the proposed works.

(b) the Tribunal was satisfied that the Respondents have been served with the application and the evidence in support and there has been no objection from any of them. The Tribunal attached significant weight to this.

- (c) potentially, had the repair works been delayed by the Applicant having to carry out statutory consultation, it may have resulted in greater cost to the Respondents.
 - (d) importantly, the real prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred by making a separate service charge application under section 27A of the Act.
17. The Tribunal, therefore, concluded that the Respondents were not being prejudiced by the Applicant's failure to consult and the application was granted as sought.
18. It should be noted that in granting this part of the application, the Tribunal makes no finding that the scope and estimated cost of the repairs are reasonable.

Name: Tribunal Judge I
Mohabir

Date: 23 April 2024

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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (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) the appropriate 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 tenants 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 taken into account 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.

Section 20ZA

- (1) Where an application is made to a leasehold valuation 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.