



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

**Case reference** : **LON/00BK/LDC/2024/0032**

**Property** : **Flats 1-105 Dudley Court, Upper  
Berkeley Street, W1H 5QA**

**Applicant** : **Intercontinental Developments Limited**

**Representative** : **Sarah Riley, James Andrew Residential**

**Respondents** : **The long leaseholders of Dudley Court**

**Type of Application** : **Application for the dispensation of  
consultation requirements pursuant to  
S.20ZA of the Landlord and Tenant Act  
1985 in relation to works involving the  
installation of a fire alarm**

**Tribunal Members** : **Judge Hugh Lumby**

**Venue** : **Paper determination**

**Date of Decision** : **8<sup>th</sup> May 2024**

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**DECISION**

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## **Decision of the Tribunal**

The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act).

## **The background to the application**

1. The Property is a purpose built block of flats, containing approximately 105 flats across nine floors with commercial units on the ground floor and basement plant rooms.
2. The Applicant is the head lessee of the Property and the Respondents are the leaseholders. The freehold forms part of the Portman Estate.
3. The Applicant has applied for dispensation from the statutory consultation requirements in respect of works to install a common fire alarm to the Property. The Applicant states that it has received an enforcement notice from the Fire Brigade. The Applicant is required to install a fire alarm in the building and in the meantime has had to install a waking watch. The application was received on 2 February 2024.
4. The Applicant states that the proposed works are urgent to mitigate the waking watch costs and to comply with the requirements of the London Fire Brigade enforcement notice.
5. The enforcement notice was served pursuant to the Regulatory Reform (Fire Safety) Order 2005 (as amended) and is dated 16 October 2023. It stated that the existing fire alarm system in the Property did not provide an appropriate method of detection and warning within the residential elements of the building and required various steps to be taken by 15 April 2024, including the installation of a common alarm system, interlinked to the flats in the Property.
6. The enforcement order also effectively required the provision of a waking watch until the new alarm was installed.
7. In addition, the enforcement notice advised that the existing fire strategy for the Property was in need of revision.
8. GDM Consultancy was appointed to specify the type of fire alarm needed in order to sufficiently compartmentalise the building in accordance with the enforcement notice. They produced a detailed specification and drawings for use in the tender process to select a contractor to install the required fire alarm system.

9. The Applicant begun a consultation process with the Respondents, by issuing a Part 1 consultation on 4 December 2023 pursuant to section 20 of the Landlord and Tenant Act 1985. However, it considered that the ongoing cost of the waking watch meant that carrying out a full part 1 and part 2 consultation process would be too expensive and it was preferable to install the new alarm as soon as possible.
10. Three tenders were received with the lowest being Lloret Fire Solutions Limited with a price of £81,005.41 plus VAT, on the basis of the installation of a wired system (the other tenders were priced at £176,822.92 and £84,189.11, both plus VAT). However, due to concerns with asbestos in the riser cupboards, the Applicant decided to move to a wireless system. It was felt that the risk of disturbing asbestos and resultant costs and the delays (and so increased waking watch costs) caused by installing a wired system meant that the wireless system was more appropriate, even if more expensive. Lloret were invited to retender on the basis of a wireless system, leading to a revised contract price of £96,560.40 plus VAT. Only Lloret was invited to tender as they were the lowest bidder for the wired system and the Applicant was keen to avoid further delays by conducting a new full tendering exercise.
11. An application was made by the Applicant to the Department of Levelling Up, Housing & Communities for a grant from the Waking Watch Replacement Fund to cover the cost of the works to install the fire alarm. This application was successful, the Applicant being informed on 14 March 2023 [sic] that a total of £114,672.48 (including VAT) had been approved, to be used to install the common alarm system. The amount awarded was said to reflect the quotation received from Lloret Fire Solutions Limited, although it is in fact £1,200 below the VAT inclusive amount quoted by Lloret. The Tribunal has assumed that this letter was in fact dated 14 March 2024, although the date does not affect the Tribunal's decision. The Applicant has explained that the funds have not yet been received and so the works will in the meantime be forward funded through the service charge.
12. At the time of the application to the Tribunal, the Applicant has not proceeded with the works. No further confirmation as to their status has been provided.
13. The Tribunal issued Directions dated 21 February 2024 in relation to the conduct of the case. It was decided in those Directions that the application be determined without a hearing, by way of a paper case. No parties have objected to this decision.
14. The Respondents were each provided with application to the Tribunal for dispensation and the Tribunal's Directions dated 21 February 2024. The Applicant has confirmed that no responses (and so no objections) were received to the application.

15. The Tribunal did not inspect the Property as it considered the documentation and information before it in the set of documents prepared by the Applicant enabled the Tribunal to proceed with this determination.
16. This has been a paper determination which has not been objected to by the parties. The documents that were referred to are in a bundle consisting of 180 pages, comprising an explanation of the application together with the application itself, the Tribunal's Directions dated 21 February 2024, a letter to leaseholders advising them of the application, the section 20 part 1 consultation letter, the revised fire strategy for the Property, the enforcement notice from the London Fire Brigade, a specification and drawings for the new system, the results of the three tenders for the works received together with revised tender from the contractor who submitted the lowest priced tender, confirmations that the directions and application had been sent to the Respondents and that there were no replies, together with a letter confirming an award from the Waking Watch Replacement Fund. In addition, the Applicant separately provided a specimen lease and a list of all leaseholders in the Property.
17. It was noted that the copy lease provided only contained odd numbered pages and was missing the even numbered pages. The Tribunal considered that sufficient had nonetheless been provided to enable it to make a determination in relation to the Applicant's application.

### **The issues**

18. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether or not service charges will be reasonable or payable.

### **Law**

19. Section 20 of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
20. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by an application such as this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.

21. The Applicant seeks dispensation under section 20ZA of the 1985 Act from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act.

22. Section 20ZA relates to consultation requirements and provides as follows:

*“(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.*

*(2) In section 20 and this section—*

*“qualifying works” means works on a building or any other premises, and “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*

*....*

*(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.*

*(5) Regulations under subsection (4) may in particular include provision requiring the landlord—*

*(a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,*

*(b) to obtain estimates for proposed works or agreements,*

*(c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,*

*(d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and*

*(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.*

23. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14, by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.

24. The Supreme Court came to the following conclusions:

a. The correct legal test on an application to the Tribunal for dispensation is: “Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord’s failure to comply with the requirements?”

- b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.
  - c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord's failure to comply.
  - d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.
  - e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
  - f. The onus is on the leaseholders to establish:
    - i. what steps they would have taken had the breach not happened and
    - ii. in what way their rights under (b) above have been prejudiced as a consequence.
16. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.

### **Consideration**

- 17. Having read the evidence and submissions from the Applicant and having considered all of the documents and grounds for making the application provided by the Applicant, the Tribunal determines the dispensation issues as follows.
- 18. The Tribunal is of the view that, taking into account that there have been no objections from the Respondents, it could not find prejudice to any of the leaseholders of the Property by the granting of dispensation relating to the installation of a common alarm system as set out in the application. In addition, the grant from the Waking Watch Replacement Fund should cover almost all of the cost of the works and ensure compliance with relevant requirements of the London Fire Brigade enforcement notice, making the Property safer sooner whilst ending the ongoing cost of the waking watch.
- 19. The Applicant believes that the works were urgent to ensure compliance with the enforcement notice and its deadline of 15 April 2024 and to limit the cost of the waking watch. On the evidence before it, the Tribunal agrees with this conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application.

20. The Applicant shall be responsible for formally serving a copy of the Tribunal's decision on the leaseholders. Furthermore, the Applicant shall place a copy of the Tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. It should also be posted in a prominent position in the communal areas.

**Name:** Tribunal Judge Lumby      **Date:** 8 May 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).