



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

Case reference : LON/00AZ/LDC/2023/0220

Property : 20B Queensthorpe Road, London, SE26
4PH

Applicant : London Borough of Lewisham

Representative : Lewisham Homes

Respondent : Miss Victoria Hutchings

Representative :

Type of application : To dispense with the requirement to
consult lessees about major works,
s.20ZA Landlord and Tenant Act 1985

Tribunal members : Judge M Jones

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 29 January 2024

DECISION

Summary of the Decision

- 1. The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act in respect of an Asbestos Survey and related works, chimney works, decoration works to external and common parts, renewal and/or replacement of doors and windows, electrical environmental and fencing works, masonry and render repairs, repair and/or**

replacement of rainwater goods, roofing works, works to satellite dishes, and repairs to external pathway.

- 2. The Tribunal does not impose any conditions on the grant of dispensation.**
- 3. The Tribunal has made no determination as to whether costs of the works are reasonable or payable.**

The Application and Procedural History of the Case

4. The Applicant landlord applied by application dated 25 August 2023 for dispensation under Section 20ZA of the 1985 Act from the consultation requirements imposed by Section 20 of the 1985 Act, in respect of cyclical works undertaken to the property since 13 June 2017 under a maintenance contract with a retained contractor.
5. The property is a 3-storey brick and concrete constructed house converted into 3 leasehold flats, of which flats A and C are in the ownership of LB Lewisham. The respondent is the long leaseholder of the first floor Flat B.
6. The Applicant describes the qualifying works as:

“Work start date: 13/06/2017

Date of 1st Invoice to contractors: 23/06/2017

Completion Date: 31/08/2018”
7. This description is wholly inadequate to inform the Tribunal of the nature of the qualifying works in issue, which must be deduced by consideration of successive notices including a Schedule of Works accompanying a consultation letter dated 26 July 2013, a Breakdown of Works and accompanying table dated 4 October 2016, a notice of additional works dated 21 November 2017, and the final invoice provided by the Applicant, dated 30 June 2023. In summary the works comprise major works of repair and maintenance of the external fabric of the building and internal common parts, including an Asbestos Survey and related works, chimney works, decoration works to external and common parts, renewal and/or replacement of doors and windows, electrical environmental and fencing works, masonry and render repairs, repair and/or replacement of rainwater goods, roofing works, works to satellite dishes, and repairs to external path.
8. The cost of the works as invoiced to the Respondent on 30 June 2023 was £21,311.21. The Tribunal is told that the cyclical repair works to the property are now completed.

9. A Notice of Intention under Section 20 of the 1985 Act to undertake cyclical repairs and redecorations work, improvements and component renewals was issued to leaseholders on 7 December 2009, and was followed by a series of Notices of Proposal and Estimates. Notification of costs incurred (then) to date under Section 20B of the 1985 Act was served on the Respondent on 29 September 2015. Further Notice of Estimate was served dated 4 October 2016, and was followed by the aforementioned notice of additional works dated 21 November 2017. It is not apparent from the documentation provided whether all necessary statutory consultation was undertaken by the Applicant.
10. On 12 October 2023 the Tribunal issued Directions which included, at paragraph 2 a requirement that the Respondent, if she wished to oppose the application, should complete and send both the reply form attached to the Directions and a statement in response to the application by 3 November 2023. That deadline was extended twice at the Respondent's request, to 24 November 2023 and again to 8 January 2024.
11. While raising a series of issues in her correspondence seeking extensions of time, which were taken into account by the Tribunal in granting those extensions, the Respondent ultimately declined to provide a formal response to the application, as explained in her letter to the Tribunal dated 7 January 2024.
12. No requests for an oral hearing were made, and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.
13. Before making this determination, the papers received including the Applicant's hearing bundle comprising some 156 pages were considered, to ascertain whether the issues remained capable of determination without an oral hearing and it was decided that they were, in particular given the absence of any formal representations from the Respondent.

The Law

14. The relevant section of the 1985 Act reads as follows:

“S.20 ZA Consultation requirements:

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.”

16. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson* [2013] UKSC 14. In summary the Supreme Court noted the following:

- a. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
- b. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
- c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- e. The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
- f. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
- g. The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
- h. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

15. The Applicant's case is summarised in paragraphs 4 to 9, above.

16. As indicated in paragraph 11, the Respondent declined to provide a formal response to the application.

Determination

17. Dispensation from the consultation requirements of S.20 of the 1985 Act may be given where the Tribunal is satisfied that it is reasonable to dispense with those requirements. Guidance on how such power may be exercised is provided by the leading case of *Daejan v Benson*, referred to above.
18. It is unclear in the present case whether or not the landlord complied with all consultation requirements, as summarised in paragraph 9 above. The application is bought, as explained in box 3 of page 9 of the application notice [p.11 of the hearing bundle] on the basis that the Applicant seeks dispensation in the event that the notice served under section 20B of the 1985 Act dated 29 September 2015 is considered invalid to comply with the statutory requirements, read against the Notices of Intention, Revised and Additional Works Notices provided.
19. In the event that there was failure to comply with the statutory regime, the issue is simply whether by not being consulted the Respondent has suffered prejudice.
20. I do not find anything on the evidence before me to establish that the Respondent has suffered prejudice and, as such, I am prepared to grant the dispensation sought.
21. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of Asbestos Survey and related works, chimney works, decoration works to external and common parts, renewal and/or replacement of doors and windows, electrical environmental and fencing works, masonry and render repairs, repair and/or replacement of rainwater goods, roofing works, works to satellite dishes, and repairs to external pathway.**
22. **The grant of dispensation is unconditional.**
23. In granting dispensation, the Tribunal makes no determination as to whether any service charges are reasonable or payable.

Name: Judge M Jones

Date: 29 January 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).