



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

Case reference : **LON/00BE/LDC/2022/0129**

Property : **Tower Wharf, 281 Tooley Street,
London SE1 2LA**

Applicant : **Tower Wharf Freehold Co**

Representative : **Prime Property Management**

Respondents : **Lessees of Tower Wharf**

Type of application : **Dispensation from statutory consultation requirements**

Tribunal : **Judge Nicol**

Date of decision : **13th September 2022**

DECISION

The Tribunal grants the Applicant dispensation from the consultation requirements in relation to roof replacement works at Tower Wharf, 281 Tooley Street, London SE1 2LA.

Reasons

1. This application for dispensation from statutory consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 has been determined on the papers. A face to face hearing was not held because the Tribunal directed that the case was suitable for the paper track and the parties did not object. The documents that the Tribunal was referred to are in a bundle consisting of 118 pages, the contents of which have been recorded where appropriate below.
2. The Applicant has been the freehold owner of the subject property, a purpose-built block of 18 flats, since 2016. Their agents are Prime Property Management. The Respondents are the lessees of the flats.

3. The roof to the building was replaced in 2019-20 at a cost of around £150,000. Unfortunately, in 2021 it was found to be leaking as a result of poor workmanship. The original contractor is now in liquidation so that there is no prospect of covering the cost of the remedial works from them.
4. Instead, a new specification was prepared by Consult Construct in November 2021. Following the requisite consultation, work began in June 2022 using the contractor which had given the lowest tender. However, on being partially stripped and inspected, the roof was revealed to be in even worse condition so that it could not be made reliably watertight without a full reinstallation.
5. The amended specification is significantly different from the original one and the Applicant concedes it could not reasonably be attributed to the same consultation process. With the front of the building already scaffolded and that area of the roof still leaking, the Applicant has taken the view that it would not be cost-effective to go through the consultation process again. Therefore, the existing contractor, JLM, were instructed to do the work. The Applicant's surveyor examined the price of £67,732.73 (plus VAT) and concluded that it was reasonable. The work to the rear of the building, which is not scaffolded or leaking, will be put off to another time.
6. Such works are subject to consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 because the costs exceed the threshold of £250 per flat and the Applicant has applied to the Tribunal for dispensation from those requirements under section 20ZA of the Act. As per the directions, the lessees were notified of the application on 27th July 2022. None of the lessees have commented in response, let alone opposing the application.
7. Under section 20ZA(1) of the Act, the Tribunal may dispense with the statutory consultation requirements if satisfied that it is reasonable to do so. The Supreme Court provided further guidance in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854:
 - (a) Sections 19 to 20ZA of the Act are directed to ensuring that lessees of flats are not required to pay for unnecessary services or services which are provided to a defective standard or to pay more than they should for services which are necessary and provided to an acceptable standard. [42]
 - (b) On that basis, the Tribunal should focus on the extent to which lessees were prejudiced by any failure of the landlord to comply with the consultation requirements. [44]
 - (c) Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation requirements, an unconditional dispensation should normally be granted. [45]

- (d) Dispensation should not be refused just because a landlord has breached the consultation requirements. Adherence to the requirements is a means to an end, not an end in itself, and the dispensing jurisdiction is not a punitive or exemplary exercise. The requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by and what amount is to be paid for them. [46]
 - (e) The financial consequences to a landlord of not granting dispensation and the nature of the landlord are not relevant. [51]
 - (f) Sections 20 and 20ZA were not included for the purpose of transparency or accountability. [52]
 - (g) Whether or not to grant dispensation is not a binary choice as dispensation may be granted on terms. [54, 58, 59]
 - (h) The only prejudice of which a lessee may legitimately complain is that which they would not have suffered if the requirements had been fully complied with but which they would suffer if unconditional dispensation were granted. [65]
 - (i) Although the legal burden of establishing that dispensation should be granted is on the landlord, there is a factual burden on the lessees to show that prejudice has been incurred. [67]
 - (j) Given that the landlord has failed to comply with statutory requirements, the Tribunal should be sympathetic to the lessees. If the lessees raise a credible claim of prejudice, the Tribunal should look to the landlord to rebut it. Any reasonable costs incurred by the lessees in investigating this should be paid by the landlord as a condition of dispensation. [68]
 - (k) The lessees' complaint will normally be that they have not had the opportunity to make representations about the works proposed by the landlord, in which case the lessees should identify what they would have said if they had had the opportunity. [69]
8. The Tribunal is satisfied, on the evidence, that the works were necessary and that it was not cost-effective to comply with the statutory consultation requirements rather than to proceed immediately with the amended specification. Further, none of the lessees have objected to the works, either directly to the Applicant or their agents or to the Tribunal, let alone established any basis for thinking that they would be prejudiced by the lack of consultation.
 9. The Tribunal's role at this stage is limited to determining only if the statutory consultation requirements may be dispensed with. As stated in the Tribunal's directions, "This application does not concern the issue of whether any service charge costs will be reasonable or payable."
 10. Given the lack of any objection or any evidence of prejudice, the Tribunal has determined that it is reasonable to dispense with the statutory consultation requirements.

Name: Judge Nicol

Date: 13th September 2022

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).