



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

Case reference : CHI/00MR/LDC/2024/0041

Property : Windsor Mansions, 62 Grove Road South,
Southsea, Hampshire, PO5 3RA

Applicant : Windsor Mansions Ltd

Representative : GD3 Property Ltd

Respondents : The leaseholders of the Property

Type of Application : Application for the dispensation of
consultation requirements pursuant to S.20ZA
of the Landlord and Tenant Act 1985

Tribunal Members : Judge Hugh Lumby

Venue : Paper determination

Date of Decision : 29 May 2024

DECISION

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 block containing 14 residential flats above five ground floor commercial units.
2. The application has been made by the management company. The application suggests that it is an RTM company but representations have been received stating that it is a landlord appointed management company. The freeholder is stated in the application to be Khosla Investments Ltd, although the partial objections received identify the landlord/freeholder as Indra Kumari Khosla as Administrator for the Estate of Rajesh Kumar Khosla.
3. The application relates to works to repair structural steel beams in the commercial units which support the upper floors of the Property. The beams have deteriorated and require repairs. The works will comprise opening the areas to the beams and fitting additional steel strengthening where needed.
4. The defects to the beams were identified in a structural report carried out by Reynolds Associates, with a structural engineer appointed to calculate what was required. Based on this, a schedule of works was prepared by Reynolds Associates and two tenders obtained. The Reynolds Associates report states that the strengthening works “are essential and urgent”.
5. The Applicant considered the works were urgent as the beams effectively hold the upper levels in place. As a result, the commercial unit below cannot be let, causing the landlord a loss of income.
6. The Applicant has obtained two quotations for the works, the first being for £53,400 including VAT and the second for £46,248 including VAT. It is not known which the contractor (if either) the Applicant intends to appoint.
7. The works have not commenced as far as the Tribunal is aware.
8. The Applicant has confirmed that the Respondents have been informed of this application. Two partial objections in identical form have been received.
9. The objections are stated to relate to Flats 5, 9 and 10. The objections relating to Flats 5 and 9 have been made by Arkay Commercial Real Estate

and that in relation to Flat 10 has been made by the administrator of the estate of the late Rajesh Kumar Khosla (who is also the freeholder). The objections are to factual inaccuracies in the application. The first is that the Applicant describes itself as the “RTM Company of upper floors” when it is in fact the management company appointed by the freeholder; its remit extends beyond the upper floors to include the main structures of the building in which the Property is located. Secondly, the Applicant is wrongly named as the respondent in the application form. Thirdly, the freeholder is wrongly identified in the application form. Finally, there is a further reference in section 4 of the application to the Applicant being granted an RTM.

10. By Directions of the Tribunal dated 29 April 2024 it was decided that the application be determined without a hearing, by way of a paper case.
11. 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.
12. This has been a paper determination which has been consented to by the parties. The documents that were referred to are the Applicant’s application, the structural report prepared by Reynolds Associates, the two tenders received, a list of the leaseholders, various letters of support and two partial objections plus the Tribunal’s Directions dated 29 April 2024, the contents of which has been recorded.

The issues

13. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying long-term agreement. The Tribunal has made no determination on whether the costs are payable or reasonable. If a Lessee wishes to challenge the payability or reasonableness of those costs as service charges, including the possible application or effect of the Building Safety Act 2022, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

Law

14. 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.
15. 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.

16. 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.
17. 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.*

Findings

7. 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.
8. The Supreme Court came to the following conclusions:

- a. The correct legal test on an application to the Tribunal for dispensation is: [L11] [SEP] [L11] [SEP] “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 applicants, the Tribunal determines the dispensation issues as follows.
18. The Tribunal considered the two partial objections received. These related solely to inaccuracies in the application form. The Tribunal has noted these inaccuracies but determines that the correct position is apparent from the papers and no prejudice has been incurred by the Respondents as a result of these inaccuracies.
19. The Tribunal is of the view that, taking into account that there have been no other objections from the leaseholders, it could not find prejudice to any of the leaseholders of the Property by the granting of dispensation

relating to the urgent works to strengthen the structural beams in the Property.

20. The Applicant believed that the works were urgent to ensure that continued support to the upper parts of the Property. The Reynolds Associates report identifies these works as urgent and essential. 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.
21. 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. In this way, leaseholders who have not returned the reply form may view the Tribunal's eventual decision on dispensation and their appeal rights.

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.