



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

Case reference : **LON/00AC/LDC/2023/0207**

Property : **Belview Lodge, 2B The Grove, London
NW11 9SH**

Applicant : **Belview Lodge Management Limited**

Representative : **Birch Law Limited**

Respondent : **The leaseholders of Belview Lodge, 2B
The Grove, London NW11 9SH**

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 : **8th January 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 purpose built block of nine residential apartments, ranging from one to four bedrooms.
2. The Applicant has applied for dispensation from the statutory consultation requirements in respect of urgent works to replace an historic sewage pump with a new pump, new electrics, and drainage. The works have been carried out. The cost of the works is stated to be around £32,041.12.
3. The works were carried out on an emergency basis following the discovery of the historic sewage pump's failure in the basement of the Property on 28 December 2022. The Applicant argues that the works needed to be carried out urgently as the pump's failure was causing raw sewage and water to fill up the basement flats and some of the Property's common parts. In addition, the lifts in the Property became inoperable due to the flood; these lifts were required by elderly residents in the Property to gain access to and egress from their apartments. As a result there was insufficient time to carry out a consultation pursuant to section 20 of the Landlord and Tenant Act 1985.
4. The works were carried out by various contractors between 28 December 2022 and 9 March 2023.
5. Each of the leaseholders comprising the Respondent were given notice of the works due to be carried out on 3 January 2023 and subsequently updated as these progressed.
6. Whilst no consultation has been carried out, each of the leaseholders comprising the Respondent have been made aware of the application to seek dispensation. No objections or other responses were received.
7. By Directions of the Tribunal dated 26 September 2023 it was decided that the application be determined without a hearing, by way of a paper case. No parties have objected to this decision.
8. 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.

9. This has been a paper determination which has been consented to by the parties. The documents that were referred to are in a bundle consisting of 114 pages, comprising the Applicant's application, the specimen lease provided with it and a deed of variation to this, plus the Tribunal's Directions dated 26 September 2023, various invoices items of and correspondence together with a witness statement from Gavin Ling (a director of the Applicant), the contents of which has been recorded.

The issues

10. 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

11. 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.
12. 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.
13. 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.
14. 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.

15. 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.

16. The Supreme Court came to the following conclusions:

a. The correct legal test on an application to the Tribunal for dispensation is: ^[1111]_[SEP: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 is of the view that, taking into account that there have been no 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 works to replace an historic sewage pump with a new pump, new electrics, and drainage and as set out in the application.
- 19. The Applicant believes that the works were urgent to address an emergency sanitation issue. It contends that any temporary repair would have been impracticable, unworkable and expensive. 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 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).