



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

- Case Reference** : LON/00BK/LDC/2024/0085.
- Property** : 3 Flats at 6 Devonshire Place, London W1G 6HN.
- Applicant** : Howard de Walden Estates Limited.
- Representative** : Warners Law LLP - Nicholas McKnight – ref: HOW316/161.
- Respondent** : 1 Leslie Paul Butterfield & Penelope Gillian Harris
2 John Shand Kydd
3 Eduardo Sanchiz & Maria Garin
- Type of Application** : To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985.
- Tribunal Members** : Mr D Jagger MRICS
- Date of Decision** : 19 June 2024
Revised : 2 July 2024

Decision

Decisions of the Tribunal

We exercise our powers under Rule 50 to correct the clerical mistake, accidental slip or omission in paragraph 25 of our Decision dated 19 June 2024. Our amendments are made in red. We have corrected our original Decision because it has been confirmed by Warners solicitors that there are three leaseholders and not 32 as originally set out in this paragraph.

- (1) 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).
- (2) This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of liability to pay, for a reason other than non-consultation in respect of the insurance premiums and the reasonableness and/or the cost of the premiums
- (3) The reasons for the Tribunal's decision are set out below.

The background to the application

1. The property is a mid-terrace Grade II Listed period building on basement ground and four upper floors converted to form six flats. Three of which are held on long leases (the respondents)
2. 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.
3. This has been a paper hearing which has been consented to by the parties. The documents that were referred to are prepared by the Applicant, plus the Tribunal's Directions dated 16 April 2024.
4. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act, (see the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987), Schedule 4). The request for dispensation concerns **a qualifying long-term agreement (QLTA) in respect of insurance**. The applicant states that the landlord's insurance team negotiated an insurance contract with Royal Sun Alliance under a block policy for a period of 3 years in 2022 without consulting under S.20. They say that the negotiated agreement achieved very significant discounts on what otherwise would have been payable.

The applicant seeks dispensation in relation to the contract for the years 2022-23 and 2023-24 and states that the agreement has been terminated for the service charge year 1 April 2024-31 March 2024.

5. The landlord states that the qualifying long-term agreement for insurance provided a “rate stability agreement” which in effect fixes the premiums at a discount for the 3 year period. It is proposed to pass the cost of the insurance premiums to leaseholders through the service charge.
6. 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.

7. The Directions on 16 April 2024 required any of the three leaseholders who opposed the application to make their objections known on the reply form produced with the Directions. The leaseholders have prepared a joint Statement in Response to Applicant dated 15 May 2024

8. By the same Directions of the Tribunal dated 16 April 2024 it was decided that the application be determined without a hearing by way of a paper case.

The issues

9. 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.

Findings

10. 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 and the respondents submissions, the Tribunal determines the dispensation issues as follows.
11. Section 20 of the Landlord and Tenant Act 1985 (as amended) 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. 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.
14. The Supreme Court came to the following conclusions:
 - a. The correct legal test on an application to the Tribunal for dispensation is: ¹¹¹¹¹_{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.
- 17. The whole purpose of Section 20ZA is to permit a landlord to dispense with the consultation requirements in Section 20 of the Act if the Tribunal is satisfied that is necessary for them to be dispensed with.
- 18. The Tribunal has considered the submissions made by the leaseholders in the “Statement in Response to Applicant” whereby the leaseholders have prepared a detailed case objecting to the application for dispensation. In the first instance, it is regrettable that such a basic oversight was made by the Landlord’s insurance team in connection with this matter.
- 19. The one issue for the Tribunal is to determine whether or not it is reasonable to dispense with the statutory consultation requirements and if so was there any relevant financial prejudice suffered by the three leaseholders as a result of a failure to consult.
- 20. The Tribunal’s focus should not, therefore be on the seriousness of the breach of the consultation requirements, but on any prejudice caused by the breach. The overarching question is not whether the Landlord acted reasonably, but is whether the Tribunal is satisfied that it is reasonable to dispense with compliance.
- 21. On the balance of the evidence provided by the parties it could not find prejudice to any of the leaseholders of the property by the granting of dispensation relating to the qualifying long-term agreement in respect of insurance as set out in the documentation in the bundle submitted in support of the application.

22. This decision does not concern the reasonableness of such insurance premiums during this period and the respondents are not precluded from submitting an application under Section 27A of the Act to contest whether the service charge cost is reasonable or payable if they so wish.
23. On the evidence before it, the Tribunal believes that it is reasonable to allow dispensation in relation to the subject matter of the application. The Applicant is required to ensure that the building is insured in accordance with the terms of the lease.
24. Rights of appeal made available to parties to this dispute are set out in an Annex to this decision.
25. The Applicant shall be responsible for formally serving a copy of the Tribunal's decision on the **3** leaseholders named on the schedule attached to the application. ~~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 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.

Name : D I Jagger MRICS. 19th June 2024

Revised 2nd July 2024

ANNEX - 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.