



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

Case reference : **LON/00AP/LDC/2023/0219**

Applicant : **Cedar Place (Bruce Grove)
Freehold Limited¹ and/or Cedar
Place Residents Association (Bruce
Grove) Limited²**

Representative : **Barnard Cook**

Respondent : **Various Leaseholders of Cedar
Place**

Property : **Cedar Place, 14 Bruce Grove, N17
6YT**

Tribunal : **Judge R Foskett**

Date of determination : **18 December 2023 (on the papers)**

**DETERMINATION OF AN APPLICATION UNDER SECTION 20ZA
OF THE LANDLORD AND TENANT ACT 1985**

Decision of the Tribunal

(1) The Tribunal grants dispensation pursuant to section 20ZA of the Landlord & Tenant Act 1985 (“the L&T Act 1985”) in respect of the Improvement Works (defined below).

¹ The Application Notice names the landlord as Cedar Place Freehold Ltd, but such a company does not appear to exist at Companies House. No Office Copy Entry for the freehold of the Property has been given. Cedar Place (Bruce Grove) Freehold Ltd exists, with company number 11272202 and its directors and shareholders broadly match the list of leaseholders given in the e-bundle. Accordingly, the Tribunal assumes that it is the landlord and freeholder of the Property.

² This company (company number 01948276) is named as “the Association” in the sample lease in the e-bundle and appears to be responsible for maintaining and managing the Property. It is the company which has signed a Memorandum of Understanding with Haringey Council in relation to the funding of the works which are the subject of this application.

Background to the Application

1. The first named Applicant is the landlord of freehold property at Cedar Place, 14 Bruce Grove, London N17 6YT (“the Property”). The second named Applicant is the company which, under the relevant leases, is responsible for managing and maintaining the Property.
2. The Property is an early 19th century, Grade II listed building converted into 10 flats with a forecourt at the front, a shared left-hand side wall (as you face the property) with number 13 Bruce Grove and railings at the front.
3. The Tribunal was provided with a sample lease for the 10 flats – the bundle contains a copy of the lease for Flat 3 for 125 years commencing on 25 December 1984. The lease is between the landlord (defined in the lease as “the Lessors”), a residents’ association (defined in the lease as “the Association”) and the leaseholder (defined in the lease as “the Lessee”).
4. The application is for dispensation from the statutory consultation requirements in respect of improvement works to the forecourt of the Property, as set out in more detail in the Application Notice submitted on 16 August 2023 (“the Improvement Works”). The works include new gates, railings, concrete edging, permeable surfacing, bin storage enclosure and refurbishment of existing railings and planting and are detailed in the Memorandum of Understanding between the Association and Haringey Council signed in April 2023.
5. The Tribunal was not provided with an Office Copy Entry for the freehold, but it appears that the freehold is now registered to Cedar Place (Bruce Grove) Freehold Ltd – see footnote 1 above. The residents’ association is Cedar Place Residents Association (Bruce Grove) Ltd and, in broad terms, it is responsible under the Lease for maintaining and managing the Property. The residents’ association has signed a Memorandum of Understanding with Haringey Council in relation to the Improvement Works – see footnote 2 above.
6. The Tribunal has, in the interests of proportionality, made this determination applicable to both the Applicants named in the heading. The application notice submitted to the Tribunal gave as the landlord’s details a company which does not appear to exist on Companies House records but this appears to be a simple error and the application should have been issued in the name of one or both of the above-named Applicants. The block management services are provided by Barnard Cook London Ltd who are the company secretary for both companies and accordingly the Tribunal is satisfied that, whichever is technically the correct Applicant company, the Application has been properly made.

The reasons for the Application

7. The Applicants' position is that:
 - a. The Improvement Works have been proposed to the freeholder by Haringey Council because the Council had obtained a grant to make improvements to shopfronts and other front areas in the Bruce Grove Conservation Area.
 - b. Accordingly, the cost of the Improvement Works will be split, with Haringey Council paying 85% and the leaseholders of the Property paying 15%.
 - c. Because of the way these proposed works have come about, Haringey Council has been in full control of the tender and consultation processes for the Improvement Works.
 - d. Accordingly, the Applicants seek dispensation for complying with the requirements of section 20 because it is not possible to do so in the circumstances.

8. The Leaseholder respondents have been made aware of the upcoming works via regular correspondence³ and a leaseholders' meeting was held in March 2023 to deal with any concerns, prior to the signing of a Memorandum of Understanding in relation to the Improvement Works between Haringey Council and the Association. No objections have been received.

9. Planning and listed building consent for the Improvement Works have been granted by the relevant local authority (see page 80 of the e-bundle for confirmation of this in an email to leaseholders from one of the director's of the residents' association).

10. The Applicants sought a paper determination on the fast-track. No Respondent has objected to the application or asked for a hearing. The matter was therefore determined by the Tribunal on 18 December 2023 on the papers.

11. The Applicants provided an 80-page e-bundle which the Tribunal has reviewed and taken into account in reaching this determination.

The Tribunal's decision

³ The e-bundle contained communications to leaseholders regarding the costings and drawings for the Improvement Works on 17 March 2023 (page 55), the proposed Memorandum of Understanding, costings and scope of works on 30 March 2023 (page 55) and the proposed Application to the Tribunal on 2 October 2023 (pages 54 and 80).

The issue

12. It appears to be common ground between the parties that the Improvement Works would be subject to consultation requirements under section 20 of the L&T Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 on the basis that the costs would exceed the threshold of £250 per flat. By virtue of sections 20 and 20ZA of the L&T Act 1985, any relevant contributions would be limited to £250 unless the Service Charges (Consultation etc) (England) Regulations 2003 (“the Regulations”) were complied with or dispensation were granted by the Tribunal.
13. The issue in this Application is whether it is reasonable to dispense with the consultation requirements. As stated in the Tribunal’s Directions of September 2023, *“This application does not concern the issue of whether any service charge costs will be reasonable or payable.”*
14. Any issue as to the cost of the works may be the subject of a future application by the landlord or leaseholders under sections 19 and 27A of the L&T Act 1985 to determine the payability and/or reasonableness of any service charge under the relevant leases.

The Law

15. Section 20ZA of the Act, subsection (1) provides as follows:
‘Where an application is made to a 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 Supreme Court provided guidance on this section in *Daejan Investments Ltd v Benson* [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]

17. An applicant can apply for dispensation in advance (*Daejan* at [56]) or retrospectively (the *Daejan* decision was itself an application for retrospective dispensation).

The decision: reasons

18. The Tribunal finds that there is cogent evidence adduced to show that in respect of the Improvement Works dispensation is reasonable, principally because there is an absence of evidence of prejudice and positive evidence that the leaseholders have agreed to the Improvement Works and to fund 15% of the costs of them.

(i) The leaseholders appear to be content to contribute 15% of the costs of the Improvement Works and have made no representations either to the freeholder or the residents'

association or the block manager or to the Tribunal that the works are unnecessary and/or raised any concerns about the standard of the proposed works or the costs of those works;

- (ii) There is no evidence that the leaseholders were or will be prejudiced by the failure of the landlord to comply with the consultation requirements and the Memorandum of Understanding details a number of steps which Haringey Council will take in connection with the procurement of the Improvement Works which will likely benefit the leaseholders;
- (iii) Given that Haringey Council has run a tender process, the extent, quality and cost of the works were unlikely to have been unaffected by the landlord's failure to comply with the consultation requirements and no evidence has been adduced to suggest any such prejudice;
- (iv) According to the Memorandum of Understanding, the leaseholders and the estate of a former leaseholder have all consented to the Improvement Works (see recital (B) on page 60 of the e-bundle).

Tribunal: Judge R Foskett

Date: 18 December 2023