



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

Case Reference : **MAN/ooBN/LDC/2024/0007**

Property : **398-01 Milltown Apartments, Stand Lane, Radcliffe, Manchester, M26 1LJ**

Applicant : **Grey GR Limited Partnership Management Company Ltd**

Applicant's Representative : **JB Leitch**

Respondent : **The Long Leaseholders (see Annex A)**

Type of Application : **Landlord & Tenant Act 1985 – Section 20ZA**

Tribunal Judge : **Mr John Murray LLB**

Date of Order : **1 July 2024**

REASONS FOR DECISION

DETERMINATION

The Tribunal determines that dispensation from consultation for the works as detailed in the application be granted pursuant to s20ZA Landlord and Tenant Act 1985.

INTRODUCTION

1. An application was made by the Applicant for retrospective dispensation of the consultation requirements of s20 of the Landlord and Tenant Act 1985 in relation to qualifying works to 398-01 Milltown Apartments, Stand Lane, Radcliffe, Manchester, M26 1LJ ("the Premises").
2. The Premises were described in the application as a three floor semi detached building comprising of 12 residential units let on long leases. The building contains a large cellar containing 12 water meters, 12 electric meters, the main fuse board and incoming supplies for utilities, The Premises including a small car park at the rear of the building. A statement of case accompanied the application.

DIRECTIONS

3. Directions were made by a Legal Officer on the 5 April 2024 for the matter to be determined by way of a paper determination unless any of the parties requested a hearing.
4. The Applicant's application and statement of case was taken as the Applicant's case. The Applicant was directed to send a copy of the case and the directions to each of the Respondents and confirm to the Tribunal this had been done. .
5. Any Respondent who opposed the application was invited to send to the Applicant and the Tribunal any statement they wished to make in response to the Applicant's case. The Applicant was given a right of reply within 7 days of receipt of any Respondent's statement. The Tribunal was to determine the matter in or after the week commencing 10 June 2024.
6. The Tribunal received an email from a Respondent Mr. Jim Brown dated 10 May 2024 requesting an extension as he had been overseas and had not received the correspondence from the Applicants until 8 May 2024. He requested a seven day extension.
7. The Tribunal received an email from a solicitor Mr. Rubin dated 13 May 2024 indicating he was instructed by two of the Respondents Ilan and Naama Cohen who resided in Israel, and had only received the proceedings via letter on the 10 May 2024. He noted the time for responding expired on the 14 May and asked for a 14 day extension of time until 28 May 2024. The email was copied to the Applicant's solicitors who agreed to the request.
8. The Tribunal extended time for any Respondent to file a statement by no later than 5pm on 28 May 2024, and for the Applicant to have an additional 7 days to provide any statement in reply.

THE APPLICATION

9. The Applicant's statement of case was attached to the application, and dated 11 January 2024. It outlined the works requiring dispensation as emergency plumbing works which involved repairing, relocating and resecuring twelve water supply pipes for each unit. The works had already been carried out (and completed) by a contractor Techniheat Plant Services Ltd during multiple visits from 21 August 2021 after the collapse of water pipes in the cellar.
10. Earlier works in March 2023 had been carried out to install props to support the ground floor whilst repairs to the pipework were carried out. These works were not part of the dispensation application.
11. A tenant emailed the Applicant on the 12th July 2023 to advise that the waterpipes in the cellar had collapsed onto the basement floor resulting in poor water pressure/no water all for some apartments in the building. Urgent works were carried out on 23rd August 2023 to rectify the situation.
12. The Managing Agents Inspired Property Management Limited sent emails to leaseholders on 12 13 and 17 July 2023 to advise of the situation with the collapsed water pipes, that water would be switched off on 44 July, and that water valued would be isolated on 18 July to facilitate works to repair and secure the water supplies for all units.
13. The Applicant stated that they had engaged with leaseholders "as far as practicable" and there was no prejudice to leaseholders that they were aware of.
14. The Applicant stated that they were unable to consult in accordance with s20 requirements due to the necessity of the Fire Alarm Works, (*sic*), and the fact they decided to proceed with a single contractor and obtain only one quotation. The reference to Fire Alarm Works is presumably a typing error given that the application has nothing to do with Fire Alarm Works.

THE RESPONSE

15. A letter of response was submitted on behalf of leaseholders of 10 of the 12 units by email on 13 May 2024.
16. They considered the scope of works was excessive/unwarranted, and wished to commission an independent assessment and obtain alternative quotes. They requested a delay in proceeding with the works until the review was conducted.
17. They questioned the cost of the works being borne by them, and suggested that there might be grounds to challenge this, possibly involving issues relating to the original construction or inherent defects.

18. They wished to seek independent legal advice and requested no further action be taken until such legal advice had been obtained and considered.
19. They asked that upon completion of any approved works, a comprehensive surveyor's report be conducted and approved by the building's insurance provider.
20. An email was sent to the Tribunal by one of the leaseholders on 28 May 2024 apparently on behalf of 11 of the 12 units, seeking a further extension of time beyond 28th May to appoint a barrister to help them understand their rights. They said that 66% of the Respondents were overseas so that "gathering input" took extra time. Two of the Respondents (the email did not say who) "had not received any documentation from the application" (which had now been shared). If the extension was not granted, they wished to submit additional evidence to be considered as their case.
21. An extension was granted for the Respondents to send any responses by no later than 5pm on 19 June 2024 to the Applicant and to the Tribunal.
22. A written response was signed, filed and served on behalf of 11 of the 12 Respondents on the 14 June 2024.
23. They stated that not all leaseholders had received notice of the proceedings and they had not had information about the actual costings of the works, and sought disclosure of the actual costings of the works involved and final invoices within fourteen days. They had not been consulted about choice of contractors. There had been no water ingress, and no one was aware of a risk to life. They lost the opportunity to review and challenge the scope of the work or select alternative quotes.
24. They stated that service charges had increased each year since 2022, from £994, to £3025, to £4317, and a cost of almost £416902.45 was being shared between leaseholders for major works.
25. Only three "light touch" emails had been sent to leaseholders from the date the water pipes collapsed until the date the works were commenced. They were prejudiced by the lack of consultation.

THE APPLICANT'S STATEMENT IN REPLY

26. The Applicant filed and served a statement in reply on the 26 June 2024.
27. The Applicant reiterated that the only issue for the Tribunal to consider is whether it is reasonable to dispense with statutory consultation requirements in respect of the works set out within the Applicant's statement of case.
28. The factual burden of identifying some relevant prejudice would be on the tenants to identify what they would have said if the consultation exercise had been entered into, and no Respondents had provided any evidence as to what they would have done differently had a full consultation taken place.

- 29. The Applicant stated that the Respondents had not suggested any conditions that might be put in place if dispensation was to be granted.
- 30. The Applicant states that information had been sent to the addresses that the Managing Agent had for all of the leaseholders, and they wrote to all leaseholders to advise of the extension of time granted.
- 31. They confirmed that the works were carried out within 40 days of discovery, which would not have given sufficient time for consultation. They further confirmed that the propping up works did not require consultation as they did not constitute qualifying works.
- 32. The Applicant confirmed that the cost of the works was £8397.16 and attached copies of the invoices. They pointed out that the Applicants could challenge the costs of the service charges for the works under s27A Landlord and Tenant Act 1985. The comments as to increase in service charges generally/management of the Premises were irrelevant to the application.

THE LEGISLATION

The relevant legislation is contained in s20ZA Landlord and Tenant Act 1985 which reads as follows:

s20 ZA Consultation requirements: supplementary

- (1) Where an application is made to the appropriate 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.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
 - (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.
- (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.

(6) Regulations under section 20 or this section—

- (a) may make provision generally or only in relation to specific cases, and
- (b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament

THE DETERMINATION

33. The Tribunal has jurisdiction under section 20ZA to dispense with consultation before works have been carried out, as well as retrospectively when works have been carried out and completed, as in this case.
34. The Applicant notified the Tribunal in their statement of reply that the works cost a total of £8397.16 – which would be £699.76 per leaseholder – over the statutory threshold and therefore "Qualifying works".
30. The only issue for the Tribunal to consider is whether or not it is reasonable to dispense with the consultation requirements. The application does not concern the issue of whether any service charge costs resulting from any such works are reasonable or indeed payable and it will be open to lessees to challenge any such costs charged by the Applicant under section 19 and 27A of the 1985 Act.
31. This was confirmed by HHJ Huskinson in the Upper Tribunal who considered the jurisdiction for prospective dispensation under s20ZA in the case of **Auger v Camden LBC [2008]**. The Upper Tribunal confirmed that the Tribunal has broad judgment akin to a discretion in such cases. The dispensation should not however be vague and open ended. The exercise of

discretion to grant dispensation requires the clearest of reasons explaining its exercise

32. Dispensation was considered in depth by the Supreme Court **in Daejan v Benson [2013] UKSC14** which concerned a retrospective application for dispensation. Lord Neuberger confirmed that the Tribunal has power to grant a dispensation on such terms as it thinks fit, providing that the terms are appropriate in their nature and effect.
33. At paragraph 56 Lord Neuberger said it was “clear” that a landlord may ask for dispensation in advance for example where works were urgent, or where it only becomes apparent that it was necessary to carry out some works whilst contractors were already on site carrying out other work. In such cases it would be “odd” if the (LVT) could not dispense with the Requirements on terms which required the Landlord, for instance (i) to convene a meeting of the tenants at short notice to explain and discuss the necessary works, or (ii) to comply with stage 1 and/or stage 3, but with (for example 5 days instead of 30 days for the tenant to reply.
34. Lord Neuberger also confirmed that conditions could be imposed as to costs, aside from the Tribunal’s general powers to award costs, (which at that time were limited), drawing a parallel to the Court’s practice to making the payment of costs a condition of relief from forfeiture.
35. The correct approach to prejudice to the tenants is to consider the extent that tenants would “relevantly” suffer if an unconditional dispensation was accorded. The Tribunal needs to construct what might happen if the consultation proceeded as required - for instance whether the works would have cost less, been carried out in a different way or indeed not been carried out at all, if the tenants (after all the payers) had the opportunity to make their points.
36. It seems clear in this case that the works were required urgently, following reports that water pressure had dropped, or water supplies stopped altogether in some units. A landlord has a legal responsibility to repair installations for the supply of water, and this responsibility would also be owed by any leaseholders who let their properties out under an assured or assured shorthold tenancy.
37. It is clear that statutory consultation could not have been carried out within the 40 day time frame that the repairs should have been carried out in.
38. Had the consultation taken place there would undoubtedly have been questions raised by the leaseholders as to the specification of the works, and the leaseholders would have had more warning that they were about to incur significant expense.
39. Communication by the Applicant could have been better. The Leaseholders were not told of the costs of the works, and the emails saying the water would be cut off did not provide any indication that major works were going to be carried out. It may be that the Applicant did not have a final figure by that

stage, but they must have had an indication as to what the works might cost before commissioning them.

40. The works have been completed, so dispensation from consultation is not required to enable the Applicant to proceed with the works. It is however necessary for the Applicant to avoid the statutory restriction to £250 per property for the works.
41. The observations raised by the Respondent did not challenge that the works should be carried out, although they may have wished to propose alternative providers or consider the specification, and they were denied the opportunity to do this. The Tribunal has not been put on notice as to any particular prejudice suffered, or any conditions that might be put in place.
42. It would not be considered appropriate, in the absence of any evidence as to why it might be considered necessary, to make dispensation conditional upon the Tribunal ordering that a further comprehensive surveyor's report be conducted and approved by the building's insurance provider.
43. The Tribunal is satisfied that the works were necessary and that it was imperative to order them on an urgent basis after to maintain the water supply to Properties, and that despite reservations above about communication generally, it would be reasonable to grant dispensation in this instance.
44. The Respondent's concerns about increasing service charges generally are not, as the Applicant points out, relevant to the issue under review.
45. This judgement does not address whether the costs of the works are either payable, under the terms of the lease, or reasonable in terms of costs and quality of those works, and any leaseholder who has concerns in any of those respects has a right to apply to the Tribunal pursuant to s27A Landlord and Tenant Act 1985.

Tribunal Judge J Murray LLB

1 July 2024

Annex A

Leaseholders

William George Grabham & Linda Anne Grabham

Tom Goldman

Stanley Sudhir Moses & Sheila Stanley Moses

Shahar Or Goldman

Milan K Patel & Bineeta Patel

Marie-Eve Maillet

Maital Ben Hur & Gal Aga

Lior Silber & Daniela Sophie Silber

James Brown & Tania Brown

Ilan Cohen & Naama Cohen

Gil Iancu

Chris Sloan Property Limited