



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

Case reference : **LON/00BE/LDC/2024/0045**

Property : **5b Bear Lane, London, SE1 0UH**

Applicant : **Westbury Residential Limited**

Representative : **Peter Cobrin, Senior Property Manager**

Respondent : **Clarion Housing Association Ltd**

Interested Parties : **The leaseholders of Flats 20-25,
5b Bear Lane, SE1 0UH**

Type of application : **Dispensation with Consultation
Requirements under section 20ZA
Landlord and Tenant Act 1985**

Tribunal member : **Judge Robert Latham**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **29 July 2024**

DECISION

The Tribunal grants this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 without condition in respect of urgent works to replace the failed Automatic Opening Vent.

The Application

1. By an application, dated 14 February 2024, the Applicant applies for dispensation from the statutory duty to consult in respect of urgent works to replace the failed "Automatic Opening Vent" ("AOV") in the Bear Lane building. The cost of the works will exceed the statutory threshold of £250 per flat.
2. The application has been issued by Westbury Residential Ltd ("Westbury"), who describe themselves as the appointed property managers for 5B Bear Lane, London SE1 0UH and its linked property, 18 Great Suffolk Street, London SE1 0UG. Westbury has been appointed by the freeholder, CFIF Nominee Ltd. Westbury named the freeholder as the Respondent to its application.
3. Westbury provided a copy of the lease for "Plot 107 Bear Lane and Great Suffolk Street, London SE1" which named Fontpress Limited as the landlord and Mr Henry John Duncan Rowe and Mrs Frances Mary Rowe as the tenant. It seems that CFIF Nominee Ltd is now the landlord, and Clarion the tenant of "Plot 107".
4. In its application, Westbury states that the AOV is the control system designed to vent smoke in the event of fire has failed in the Bear Lane building. It would take some weeks to reinstate it at some considerable cost. Westbury was having to put in place fire marshals who would be on site 24/7. It was seeking to obtain competitive quotes. Dispensation was sought on grounds that "the work is of the highest importance for obvious safety reasons, and until completed, the cost of the fire marshals will be a huge additional burden that ultimately falls on the shoulders of Clarion's social housing clients". Mr Peter Cohen, who issued the application, stated that he had liaised with Clarion Housing Association ("Clarion") following a detailed site visit, and had advised the freeholder.
5. The property at Bear Lane is described as a six storey building constructed in about 2007. Clarion hold the leases in respect of all the flats. The number of flats in the property is not specified. The majority of the flats are rented on social tenancies. However, Flats 20-25 are sublet to long lessees who will contribute towards the cost of the works. Neither Westbury nor Clarion have provided the names of these sub-lessees.
6. Section 20 of the Landlord and Tenant Act 1985 imposes an obligation on a landlord to consult where the relevant contribution of any leaseholder will exceed £250. A landlord is required to consult with any leaseholder who will be required to contribute more than £250 towards the costs of the works. In the current case, the landlord must consult not only with Clarion, but also any sub-lessees who may be required to contribute more than £250 towards the costs of the works (see

Leaseholders of Foundling Court v Camden LBC [2016] UKUT 366 (LC); [2017] L&TR 7).

7. There are circumstances, such as in the current case, where works will be urgent and will preclude a landlord from embarking upon the full statutory consultation procedures which will take several weeks. In such circumstances, section 20ZA of the Act permits a landlord to apply for dispensation. However, this Tribunal still expects a landlord to follow the spirit of the legislation, consulting to the extent that time permits and seeking to secure best value is secured by testing the market. The statutory duty to consult is part of the statutory armoury to protect leaseholders from paying excessive service charges.
8. This Tribunal has standard procedures for dealing with dispensation applications. However, these only work if a landlord provides accurate information and complies with the Directions given by the Tribunal. In a case of emergency, the landlord would be expected to proceed with the works and seek retrospective dispensation. This would be appropriate if an expensive waking watch service were required pending the execution of the works.
9. Before issuing this application, Westbury and Clarion should have identified the relevant leaseholders affected by this application. Unnecessary expense and delay has been caused by their failure to do so:
 - (i) In its application, Westbury wrongly specified the freeholder as the Respondent. This led to the Tribunal on 25 March 2024 issuing Directions against the wrong Respondent. These Directions had contemplated that the application would be determined in the week commencing 13 May.
 - (ii) On 7 May 2024, a Procedural Judge spotted this error. He required Westbury to provide the name and addresses of all the leaseholders who should be served with the application. Westbury only identified Clarion. There was a further delay before Clarion's address was provided.
 - (iii) On 15 May 2024, the Tribunal issued its second set of Directions. Directions. On the basis of the information provided by Westbury, only Clarion was named as Respondent. On 17 May, the Tribunal served the Directions on Clarion. These Directions had contemplated that the application would be determined in the week commencing 8 July.
 - (iv) On 22 May 2024, Clarion notified Westbury of the six flats occupied by leaseholders and stated that they needed to be served with the Directions. Clarion did not provide their names.
 - (v) On 4 July 2024, Westbury provided a Bundle of 100 pages in support of its application. The Directions had provided for these to be served by

28 June. Westbury states that should dispensation be granted, it will seek further tenders. Thus it seems that these urgent works have not yet been put in hand.

(vi) On 15 July 2024, a Procedural Judge reviewed the papers. The Tribunal required Clarion to confirm that only the six flats were let to leaseholders and that they had been notified of the dispensation application. Both Westbury and Clarion have confirmed that this is correct. The other properties are let under assured shorthold tenancies.

10. The Directions stated that the Tribunal would determine the application on the papers, unless any party requested an oral hearing. No party has done so.
11. By 14 June 2024, any leaseholder who opposed the application was directed to complete a Reply Form which was attached to the Directions and send it both to the Tribunal and to Westbury. The leaseholder was further directed to send Westbury a statement in response to the application. No leaseholder has returned a completed Reply Form opposing the application.
12. Section 20ZA (1) of the Act provides:

“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.”
13. Westbury states that it first became aware of the failure of the AOV after a routine inspection on 12 February 2024. Until 31 December 2023, maintenance of the AOV had been the responsibility of the freeholder. On 14 February 2024, Westbury issued this application. It sent a copy to Clarion.
14. Westbury approached Firetechnics Systems Ltd (“Firetechnics”) who attended on site and carried out a detailed inspection which revealed some questionable wiring that led to the failure of the extraction system. On 29 February 2024, Firetechnics provided a quote for the remedial work in the sum of £52,771.20 (exc VAT). The quote was valid for acceptance until 28 April. On the same day, Westbury sent a copy of the quotation to Clarion. There followed an extended technical correspondence with the with Tom Oyoko, M&E Programme Manager, with Clarion’s Building Safety Team. There was an exchange of 12 pages of emails, only two of which are included in the Bundle. It is unclear what consultation, if any, there has been with the other leaseholders.

15. In the meantime, on advice, on 20 February Westbury instituted a waking watch within the Bear Lane Building with Triton Security Ltd at a total cost of £36,630.46. On 21 March, the waking watch was terminated when the stay-put policy in force was re-confirmed.
16. **The only issue which this Tribunal has been required to determine is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable.**
17. The Tribunal is satisfied that it is reasonable to grant dispensation from the statutory consultation requirements. This is justified by the urgent need for the works. No issue of prejudice has been raised by any of the parties. It is therefore appropriate to grant dispensation without any conditions.
18. The Tribunal is concerned at the delays that have arisen in this case arising from Westbury's failure to provide accurate information and its failure to comply with the Directions issued by the Tribunal. Westbury states that it alerted Clarion to the need for these works at the earliest opportunity. Both Westbury and Clarion should have cooperated to ensure that the relevant leaseholders were consulted about the need for these works and that they were identified as parties to this application. The leaseholders, who will be required to contribute to the cost of the works, bear no responsibility for the delays that have arisen. Both Westbury and Clarion must ensure that they are not prejudiced by these delays.
19. The Tribunal will serve this decision on Westbury, Clarion and the six leaseholders.

Judge Robert Latham
29 July 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 **by e-mail** 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).