



FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CAM/26UK/LDC/2024/0025

Property : Flats 1-4, Coppin Place, 123 High Road,
Leavesden WD25 7LA

Applicant : Coppin Place RTM Company Limited
Managing Agent & Representative : Kai Bagram, Warwick Estates

Landlord : V & J Investments Limited

Respondents : The Leaseholders at the Property

Type of Application : To dispense with the consultation requirements referred to in Section 20 of the Landlord and Tenant Act 1985 pursuant to Section 20ZA

Tribunal : Judge JR Morris

Date of Application : 22 March 2024
Date of Directions : 10 July 2024
Date of Decision : 23 September 2024

DECISION

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Decision

1. The Tribunal is satisfied that it is reasonable to dispense with compliance with the consultation requirements of Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987).
2. The Applicant shall serve a copy of the Tribunal's decision on dispensation, together with the relevant appeal rights attached, to all Respondent Leaseholders.

Reasons

The Application

3. The applicant RTM company seeks retrospective dispensation with the statutory consultation requirements in respect of qualifying works which include investigatory and remedial works and/or replacement of a pump and interim waste removal.
4. The Property is a two-storey house converted into four flats, with two flats on each floor. There is a car park to the rear.
5. Directions were issued on 10 July 2024 which stated that the Application would be determined on or after 2 September 2024 based on written representations and without an inspection, unless either party made a request for an oral hearing by 7 August 2024. No request was received.
6. The Directions required the Applicant to send to the Landlord V & J Investments Limited and each of the Respondents, by hand delivery or by first class post and by email, if practicable copies of:
 - i. The application form without the list of leaseholders' names and addresses with copy invoices;
 - ii. A brief description of the relevant works for which dispensation is sought;
 - iii. The estimate of the cost of the relevant works, including any professional fees and VAT;
 - iv. Any other evidence relied upon; and
 - v. The directions and file with the tribunal confirming that this had been done and stating the date on which this was done.
7. On 23 July 2024 the Applicant confirmed that this Direction had been complied with. A copy of the letter sent to the Respondents was provided which stated that the Tribunal Directions had been included with it. It also stated in summary that the works undertaken to have the pump repaired exceeded the Section 20 threshold of £250.00 per property and therefore there was an obligation to consult all leaseholders regarding the works to be carried out. However, because of the nature of the work which needed to be carried out immediately and because the Section 20 process is a lengthy process, an application for dispensation had been made. Therefore, Leaseholders were invited to take time to review the attached Directions and should they wish to object or have any queries, to follow the instructions noted within.
8. The Directions required the Respondent Leaseholders who opposed the Application to complete and send an attached reply form to the Tribunal and a statement in response to the Application, with a copy of the reply form to the Applicant, by 7 August 2024. No representations were received.

The Law

9. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
10. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations are summarised in Annex 2 of this Decision and Reasons.
11. Section 20ZA allows a Landlord to seek dispensation from these requirements, as set out Annex 2 of this Decision and Reasons and this is an Application for such dispensation.

Submissions & Evidence

12. The Applicant provided a bundle to the Tribunal which included:
 - A copy of a Lease
 - The Application Form,
 - A Brief Description of the Works,
 - Quotations and Invoices for the Works,
 - Letter sent to the Respondent Leaseholders with Directions,
 - Directions.
13. These together set out the Applicant's case as follows:
14. The relevant provisions of the Lease are:
 - a) Under Clause 4(iv) of the Lease the Landlord covenants to "make repair maintain, replace uphold rebuild cleanse scrape and scour ...sewers drains pipes", which is now the responsibility of the RTM Company
 - b) Under Clause 4(a) – (d) the parties agree that the cost of the works under Clause 4 shall be met by the Maintenance Charge payable by the Tenants.
15. It was recognised that qualifying works involving investigation and remediation of rainwater ingress into Apartment 4 of the Main Mill Building at Bliss Mill were required in 2023 and Respondent Leaseholders had been made aware of the intention to carry out the works in 2024 via the 2024 Service Charge Budget which was issued late in 2023.

16. The sewerage system includes a pump to a waste tank. The pump had ceased to operate and the following invoices were raised to remedy the problem:

Invoice 1 - 21 January 2024 - On 18 January 2024 pump engineer called out to investigate faulty pumps. Faulty earthing found. Tanker to attend to suck waste from pit for further investigation.

Cost £354.00 including VAT

Invoice 2 – 28 January 2024 – On 24 January 2024 - Installation of replacement pump.

Cost £3,013.20 including VAT

Invoice 3 - 29 January 2024 - Three tanker visits had been made to empty foul system due to failed pumps.

Cost £2,258.40 including VAT

Invoice 4 – 17 February 2024 – On 16 February 2024 attended site to investigate failed pumps, no issues found with pumps. Blockage in Flat3. No further works required.

Cost £336.00 including VAT

17. The Applicant submitted that the works were urgent to enable the sewage system to operate. There was a slight delay between 18 January 2024 and 24 January 2024 while waiting for a replacement pump to be installed which necessitated a tanker visiting on three occasions to remove sewage.

Findings

18. The Tribunal noted the invoices and submissions of the Applicant. The Tribunal found that taking the urgency of the situation into account it was reasonable to instruct a contractor immediately to replace the sewage pumps. The consultation procedure would have led to significantly increased costs. The Tribunal found that the Respondent Leaseholders had been informed of the intended work and that they would have been aware of the need for, urgency and description of the qualifying works. These proceedings have given Respondent Leaseholders an opportunity to show any prejudice there might have been by the lack of consultation. The Tribunal has not received any such representations.
19. Therefore, in the absence of any evidence to the contrary the Tribunal found that the Respondent Leaseholders were not prejudiced in this instance by the failure to carry out the consultation procedure.

Determination

20. In making its decision the Tribunal had regard to the decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14. In summary, the Supreme Court noted the following:

- 1) The main question for the Tribunal whether the landlord's breach of the section 20 consultation requirements resulted in the leaseholders suffering real prejudice.
 - 2) The financial consequence to the landlord of not granting a dispensation is not a relevant factor.
 - 3) The nature of the landlord is not a relevant factor.
 - 4) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - 5) The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - 6) The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/ or legal fees) incurred in connection with the landlord's application under section 20ZA.
 - 7) The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
 - 8) The Supreme Court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
 - 9) The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
 - 10) Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
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21. The Tribunal is satisfied that it is reasonable to dispense with compliance with the consultation requirements of Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987).
 22. Respondent Leaseholders should note that this is not an application to determine the reasonableness of the works or their cost. If, when the service charge demands in respect of these works are sent out, any Respondent Leaseholder objects to the cost or the reasonableness of the work or the way it was undertaken, an application can be made to this Tribunal under section 27A of the Act. A landlord can also seek a determination as to the reasonableness of the cost of the work.
 23. The Applicant shall serve a copy of the Tribunal's decision on dispensation, together with the relevant appeal rights attached, to all Respondent Leaseholders.

Judge JR Morris

ANNEX 1 - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

ANNEX 2 - THE LAW

1. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
2. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations and are summarised as being in 4 stages as follows:

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days. (Referred to in the 2003 Regulations as the "relevant period" and defined in Regulation 2.)

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord's Proposals must be served on all tenants to whom an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. (Also referred to as the "relevant period" and defined in Regulation 2.) This is for tenants to check that the works to be carried out are permitted under the Lease, conform to the schedule of works, are appropriately guaranteed, are likely to be best value (not necessarily the cheapest) and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord's response to them.

3. Section 20ZA allows a Landlord to seek dispensation from these requirements, 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.
 - (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
if it is an agreement of a description prescribed by the regulations, or in any circumstances so prescribed.
 - (4) to (7)... not relevant to this application.