FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference : LON/00AM/LDC/2024/0052

Applicants: Angel Wharf Management Limited

Representative : Haus Block Management Limited

Respondents: The Leaseholders of Angel Wharf

Property: Angel Wharf, 168 Shepherdess Walk N1 7JL

Date: 26 September 2024

DETERMINATION

Decision: Dispensation is granted unconditionally.

Reasons

1. In this case the Applicants seek dispensation from the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985. The Applicants are Angel Wharf Management Limited ("The Applicants"). They are represented by Haus Block Management Limited, necessary Respondents to the application are the leaseholders of the premises affected by the application which is Angel Wharf, 168 Shepherdess Walk, N1 7JL ("The premises"). Angel Wharf is a residential property consisting of 3 adjoining blocks housing 85 residential units on Lower ground to 4th, 5th & 6th floors, 164 Shepherdess Walk 1-26, 168 Shepherdess Walk 27-62, and 56 Eagle Wharf 23-46.

2. The Applicant has applied for dispensation from the statutory consultation requirements in respect of additional works following remediation to replace combustible external wall systems. Funding was obtained for these remediation works from the Building Safety Fund. After the removal of wooden decking from the balconies and terraces additional work was identified which required the installation of new tapered insulation on levels 5 and 6 at Angel Wharf as well as the need for asphalt coverings. In addition there was a need to install a new steel section at the bottom of the hand rail on levels 5 and 6 to address changes in level for waterproofing decking works ensuring compliance with Part K regulations. These additional works do not qualify for funding under the Building Safety Fund. The additional works were necessary as a result of repeated leaks in certain areas.

3. Ordinarily a landlord would have to consult before entering into the works. Here the Applicants were already on site carrying out works so it was argued full consultation was not possible.

4. A report by Pellings dated April 2023 described in detail the additional works to the balconies as follows:

INSPECTIONS TO TERRACES AND BALCONIES

3.1. During the construction phase, and part of the scheduled works part of this is to replace the existing combustible timber decking with new non-combustible A2 aluminium decking. Following removal of the combustible material and carrying out our intrusive inspections there are many areas of concern which contribute to the leaks evident at Angel Wharf.

3.2. Prior to the installation of the new aluminium decking material as part of the works, a total number of 93 Balconies and terraces were inspected for leaks and defects, a total number of 29 balconies were leak tested and required to be replaced with a new overlay system and additional 18 flats required a full replacement of their balconies and terraces with a new full tapered insulation replacement to ensure adequate falls and drainage meets the current Building regulation requirements.

3.3. Following the removal of the existing decking and inspecting the felt material below, it was evident that this is causing significant ponding to balconies and is causing blockages within downpipes, not allowing water to disperse to the outlet beneath the existing decking material. Following this evidence, we see this is a major design fault of the concrete structure when originally constructed.

3.4. Further to the ponding discovered below the decking, upon removal of the decking material and removing the timber structural supports beneath, it was evident that the structural support rails of the balcony decking had been mechanically fixed to the membrane by standard wood screws. Upon removal of the screws which were evidently corroded was considered a contributing factor in causing many entry points for water ingress to occur beneath the membrane material and affect the resident's flats causing staining/mould to internal reveals and walls of residents flats.

3.5. A typical example Flat 60 at 6th floor level was inspected, this particular property has a large terrace which faces the regent's canal. Following removal of the existing timber decking to inspect the substrate beneath, the falls to the terrace were incorrect and should have been laid to a fall of 1:80 as per the current Building Regulations. During our inspection, this was deemed not the case. The existing drainage channels were full of ponding water and could not disperse. The outlet was also notably higher than the existing decking material meaning that no rainwater can effectively escape. Photographic evidence can be seen within Appendix A of this document.

3.6. Further opening up below the decking provided evidence that the existing substrate beneath and the outlets were only 80mm in diameter below the existing decking, the liquid coating was significantly damaged causing defects to the concrete structure of the balcony. This was evidenced by discolouration of the concrete deck beneath where salts from the concrete and rust from the reinforcement was seen on the underside from the balcony below.

3.7. Many residents' balconies have also suffered from rotting timbers to their balcony decking due to the amount of standing water. The falls of the concrete structure being incorrect is allowing

water to pool at the base of spandrel panels and sliding double doors to the entrances of the balconies. Further to this the mastic joints and seals had become brittle and perished thus allowing water to enter into properties causing significant damp and mould internally. List of roofs typical issues can be found within the reports in appendix C

3.8. Following our inspections and an overview of defects found, the main defects were resulting from inadequate falls to the outlets on balconies and terraces, areas of warping to the liquid and asphalt coatings beneath the existing timber decking. Pooling water was the other main significant finding during our inspections to date and the main contractor OCL Facades have been carrying out repairs to the existing substrate and replacing liquid coatings and full balcony and terrace tapered insulation replacement in conjunction with the original scope of works.

3.9. Due to the amount of defects found with the balconies and terraces, and the repairs identified following the defect reports carried out from the contractor which can be seen in appendix C this has added a significant cost as a variation to the original schedule of works which to date has amounted to a total of £297,622.00. The repairs to balcony membrane and full replacement of tapered insulation system equates to £153,765.14.

5. A number of leaseholders objected to the dispensation. The objections were fairly wide ranging and well thought out. It was argued that the leaseholders were given an assurance that the developer would be approached for funding as the building was defective but this did not happen before the works started. It was argued the leaseholders were in contact with Haus, the manging agents during the works and consultation would not have extended the time. It was argued that there had been time to do the consultation and that if a consultation had been carried out objections would have been made to the materials used. Peabody who own leases at the scheme objected on the basis of a lack of clarity in relation to the works and the costs etc.

6. It is important to stress that the present application deals solely with the issue of dispensation. The leaseholders are not precluded with challenging the costs or quality of the work carried out pursuant to s 27A Landlord and Tenant Act 1985

The law on dispensation

Landlord and Tenant Act 1985,s.20ZA

> **20ZA 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.*

7. In *Daejan Investments v Benson* [2013] UKSC 14, the landlord was the freehold owner of a building comprised of shops and seven flats, five of which were held by the tenants under long leases which provided for the payment of service charges. The landlord gave the tenants notice of its intention to carry out major works to the building. It obtained four priced tenders for the work, each in excess of £400,000, but then proceeded to award the work to one of the tenderers without having given tenants a summary of the observations it had received in relation to the proposed works or having made the estimates available for inspection. The tenants applied to a leasehold valuation tribunal under section 27A of the Landlord and Tenant Act 1985 , as inserted, for a determination as to the amount of service charge which was payable, contending inter alia that the failure of the landlord to provide a summary of the observations or to make the estimates available for inspection was in breach of the statutory consultation requirements in paragraph 4(5) of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 so as to limit recovery from the tenants to £250 per tenant, as specified in section 20 of the 1985 Act and regulation 6 of the 2003 Regulations in cases where a landlord had neither met, nor been exempted from, the statutory consultation requirements. The landlord applied to the tribunal under section 20(1) of the Act for an order that the paragraph 4(5) consultation requirements be dispensed with, and proposed a deduction of £50,000 from the cost of the works as compensation for any prejudice suffered by the tenants, which offer they refused. The tribunal held that the breach of the consultation requirements had caused significant prejudice to the tenants, that the proposed deduction did not alter the existence of that prejudice, and that it was not reasonable within section 20ZA(1) of the Act, as inserted, to dispense with the consultation requirements. The Upper Tribunal (Lands Chamber) dismissed the landlord's appeal and the Court of Appeal upheld the Upper Tribunal's decision.

8. The Supreme Court , allowing the appeal (Lord Hope of Craighead DPSC and Lord Wilson JSC dissenting), held that the purpose of a landlord's obligation to consult tenants in advance of qualifying works, set out in the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 , was to ensure

that tenants were protected from paying for inappropriate works or from paying more than would be appropriate; that adherence to those requirements was not an end in itself, nor was the dispensing jurisdiction under section 20ZA(1) of the 1985 Act a punitive or exemplary exercise; that, therefore, on a landlord's application for dispensation under section 20ZA(1) the question for the leasehold valuation tribunal was the extent, if any, to which the tenants had been prejudiced in either of those respects by the landlord's failure to comply; that neither the gravity of the landlord's failure to comply nor the degree of its culpability nor its nature nor the financial consequences for the landlord of failure to obtain dispensation was a relevant consideration for the tribunal; that the tribunal could grant a dispensation on such terms as it thought fit, provided that they were appropriate in their nature and effect, including terms as to costs; that the factual burden lay on the tenants to identify any prejudice which they claimed they would not have suffered had the consultation requirements been fully complied with but would suffer if an unconditional dispensation were granted; that once a credible case for prejudice had been shown the tribunal would look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice; and that, accordingly, since the landlord's offer had exceeded any possible prejudice which, on such evidence as had been before the tribunal, the tenants would have suffered were an unqualified dispensation to have been granted, the tribunal should have granted a dispensation on terms that the cost of the works be reduced by the amount of the offer and that the landlord pay the tenants' reasonable costs, and dispensation would now be granted on such terms. Per Lord Neuberger of Abbotsbury PSC, Lord Clarke of Stone-cum-Ebony and Lord Sumption JJSC. (i) 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 (post, para 45). (ii) Any concern that a landlord could buy its way out of having failed to comply with the consultation requirements is answered by the significant disadvantages which it would face if it fails to comply with the requirements. The landlord would have to pay its own costs of an application to the leasehold valuation tribunal for a dispensation, to pay the tenants' reasonable costs in connection of investigating and challenging that application, and to accord the tenants a reduction to compensate fully for any relevant prejudice, knowing that the

tribunal would adopt a sympathetic (albeit not unrealistically sympathetic) attitude to the tenants on that issue (post, para 73).

9. Lord Neuberger giving the leading judgment stated *inter alia* the following:

56. More detailed consideration of the circumstances in which the jurisdiction can be invoked confirms this conclusion. It is clear that a landlord may ask for a dispensation in advance. The most obvious cases would be where it was necessary to carry out some works very urgently, or where it only became apparent that it was necessary to carry out some works while contractors were already on site carrying out other work. In such cases, it would be odd if, for instance, 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) five days instead of 30 days for the tenants to reply.

Hearing

10. The case was originally listed for a paper determination. It was considered that this was not appropriate however due to the number of objections. At the hearing on 8th August 2024, Katerina Kaplanova appeared on behalf of Haus. The leaseholders were represented by Kaan Bulut Tekelioglu, Alexander Russell, and Neil and Yina Heson.

11. Ms Kaplanova took the Tribunal through the timeframe of events. The remediation works started on site on 30th June 2022. They were completed on 17th August 2023. In March 2023 2 main leaks from the balconies were investigated. There was extensive failure of previous patch repairs that had been carried out. An application was made to the Building Safety Fund in April 2023. The BSF were informed of the additional works that had been discovered. Some were funded but other works were not eligible for funding. This included the subject of this application. The developer Mount Anvil refused to engage in relation to the cost of the additional works. The

Applicants are considering legal action against Mount Anvil. There were defective works carried out originally. The balconies had been laid incorrectly and the guttering was deficient.

12. The leaseholders said there had been a lack of clarity as to who was going to pay for the additional works. Neither was it clear how much had to be paid. Mr Tekelioglu had received insufficient warning as to the costs of the additional works and Ms Kaplanova conceded that the sum of £382.46 should be waived.

Determination

13. On its face the application has merit. It was clearly necessary to do the additional works when the scaffolding was in place. Indeed, the need for the Applicants to act quickly is akin to urgent works of the type envisaged in *Daejan*. It would not have been feasible to carry out a consultation holding up the works on site not least because the scaffolding would be expensive to keep on site while the consultation was taking place. We consider that although the problem of leaks was known about their cause did not become clear until the remediation works started. The leaseholders had valid arguments but failed to identify specific financial prejudice that they had suffered. Accordingly, the tribunal agrees to give dispensation unconditionally. It is emphasized again that the dispensation does not affect the leaseholders' ability to challenge the service charges pursuant to s.27A Landlord and Tenant Act 1985.

Judge Shepherd

26th September 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 to the First-tier Tribunal at the Regional Office which has been dealing with the case. The application should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

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).