



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

Case Reference : **CAM/00KB/LDC/2024/0047**

Property : **Castlegate, Bedford comprising:
Flats 1-27, 27 High Street MK40 1RY
Flats 8-11, 14 Castle Lane MK40 3UD
Flats 12-24 Castle Gate Mews, MK40 3UT**

Applicant Representative : **Mahendra Ganatra
Diana Hoare
Beard & Ayers Ltd**

Respondent : **The Leaseholders of dwellings 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 : **25 July 2024**
Date of Directions : **13 August 2024**
Date of Decision : **24 October 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 the Leaseholder and his Representative.

Reasons

The Application

3. On 25 July 2024 the Applicant applied for dispensation from the statutory consultation requirements in respect of qualifying works which are to carry out electrical works. It is said that these works cannot await consultation because an electrical danger notification was given on 24 July following an Electrical Installation Condition Report (EICR). In line with EICR requirements any remedial works must be carried out as soon as possible but within 28 days. It was said that copies of the notification, report findings and quotation were sent to the respondent Leaseholders on 25 July 2024. The copy quotation describes the works and indicates a price of £20,228.12 including VAT.
4. The Property consists of 24 residential flats and 6 commercial units in a building that was converted circa 2006. The total cost of the qualifying work exceeds the threshold of £250.00 per unit which requires the Applicant to consult the Leaseholders in accordance with the procedure required under section 20 of the Landlord and Tenant Act 1985.
5. Directions were issued on 13 August 2024 which stated that the Application would be determined on or after 16 September 2024 based on written representations and without an inspection, unless either party made a request for an oral hearing by 3 September. No request was received.
6. The Directions required the Applicant to send by 20 August 2024 to 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;
 - ii. The Directions;
 - iii. Any other evidence relied upon; andTo file with the tribunal confirming that this had been done and stating the date on which this was done.
7. On 20 August 2024 the Applicant confirmed that this Direction had been complied with and that by hand delivery or first-class mail on 15 August 2024 and by email on 14 August 2024 the following copies had been sent to Leaseholders:
 - Electrical Installation Condition Report (EICR)
 - Electrical Installation Condition Report (EICR) findings
 - 3 Quotes for Electrical Remedies
 - Application to the Tribunal
 - Letter from the tribunal
 - Tribunal Directions and Tribunal's covering letter.
 - Email to Tribunal relating to need urgency of work

- Response from Tribunal
8. 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 the Lease,
 - Electrical Installation Condition Report (EICR)
 - Electrical Installation Condition Report (EICR) findings
 - 3 Quotes for Electrical Remedies
 - Application to the Tribunal
 - Tribunal Directions and Tribunal's covering letter
 - Email to Tribunal relating to urgency of work
 - Response from Tribunal
 - Email to Leaseholders giving an update on progress of the works
13. These together set out the Applicant's case as follows:
14. The relevant provisions of the Lease are:
- a) Under Clause 3.4 the Landlord covenants to "maintain repair reinstate replace and renew...(b) the main water gas electric and other services..."
 - b) Under Clause 4(3) the Lessee covenants to pay to the Lessor by way of additional rent the "Lessee's Share" which is defined in Clause 4(1)(d) to be the "Annual Maintenance Cost" which in Clause 4(1)(b)(ii) includes the

costs of and incidental to the performance by the Lessor of the covenants contained in Clause 3 and in Clause 4(1)(b)(vi) the expenses set out in the Third Schedule.

- c) The Third Schedule sets out the expenses to which the Lessee is to contribute which include, at Paragraph 1, “The expense of inspecting maintaining repairing redecoration reinstating replacing and renewing: - ... (b) the main water gas electric and other services”.
15. The Electrical Installation Condition Report (EICR) stated that “The electrical installation(s) across the Castle Gate Site has been assessed as an ‘unsatisfactory’ standard, meaning the installation does not currently comply with the IET Electrical Wiring Regulations set out in the BS 7671 :2018; A2:2022”.
16. The Findings of the Report set out in narrative form the specific findings, proposals and recommendations following the inspection. Table A at the end of the document provides a specific breakdown and individual action and more details on the identification of observations as well as the remedial works that are required to bring the installation up to the current electrical standard. The observations of the inspection are coded as follows:
C1 – Immediate Danger Present, urgent remedial action required.
C2 – Potentially Dangerous, remedial action required.
C3 – Improvement Recommended.
F1 – Further Investigation, remedial action required.
C1, C2, and F1 contribute to an unsatisfactory report.
It was noted from Table A that 4 observations were coded C1; 29 observations were coded at C2; 3 observations were coded C3; and 2 observations were coded F1.
17. As a result of the observations found during the report and the significance of the danger situations identified the electrical contractor issued on 24 July 2024 an Electrical Danger Notice on the Castle Gate Site, a copy of which was provided. The Notice identified electric shock, fire and arcing or burning excessive pressure and/or toxic gases. He informed the Managing Agent on 24 July 2024 and provided a quotation for the remedial works to be carried out which would take approximately 2 weeks with 2 Electricians on site for the entirety. In line with EICR requirements any remedial works must be carried out as soon as possible but within 28 days of the report.
18. The Applicant in an email dated 14 August 2024 expressed its concern that any dispensation would not be granted before the works would need to start by the 21 August 2024 or the matter would have to be reported to the Local authority Building Control. The Tribunal replied on 14 August 2024 that the Applicant was not prevented from starting work before the decision on dispensation but would do so at the risk of whatever decision might ultimately be made about whether to grant dispensation. Since the Respondents would need time to respond to the directions it was not possible to decide the application before 21 August 2024.

19. Three quotations were obtained for the remedial works as follows:
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|--|--------------------------|
| Ge-Os (who carried out the inspection) | £20,228.12 including VAT |
| PCEBS | £31,326.00 + VAT |
| JDL Electrical Services | £22,908.00 including VAT |
20. The Applicant provided a copy of an email to Respondents dated 28 August 2024 giving an update at approximately the half way point of the works informing them of progress.

Findings

21. The Tribunal from its knowledge and experience is aware of the need to act promptly within a timescale of 28 days where an Electrical Danger Notice has been served. Nevertheless, the Applicant did obtain three quotations and selected the cheapest. However, the Tribunal noted that two lowest quotations were only £2,000 apart which would not, on the face of it, be such a difference as to raise concerns as to the quality or standard of the work of the lower quotation.
22. Therefore, considering the urgency of the work and quotations provided the Tribunal finds that the Leaseholders have not been prejudiced by the failure to carry out the consultation procedure.

Determination

23. 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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24. 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).
 25. The 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 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.
 26. The Applicant shall serve a copy of the Tribunal's decision on dispensation, together with the relevant appeal rights attached, to all Leaseholders.

Judge JR Morris

Annex 1 – Right 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.