



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

**Case Reference** : **LON/00AY/LDC/2024/0200**

**Property** : **The Tower, One St George Wharf  
London SW8 2 DU**

**Applicant** : **Berkeley Seventy-Seven Limited**

**Respondents** : **The leaseholders of the flats within  
the property**

**Type of Application** : **Application under section 20ZA to  
dispense with consultation  
requirements for a scheme of  
Major work**

**Tribunal Member** : **Judge Daley**

**Date and venue of  
Paper Determination** : **25 October 2024, remote**

**Date of Decision** : **25 October 2024**

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**DECISION**

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## **Decision of the tribunal**

- i. The tribunal grants dispensation in respect of the major works relating to the replace the Wet Riser pump. in the sum of £8475.00.**
- ii. The Tribunal makes no order for the cost occasioned by the making of the application.**

## **The application**

1. The applicant by an application, made on 22 July 2024 sought dispensation under section 20ZA of the Landlord and Tenant Act 1985 from part of the consultation requirements imposed on the landlord by section 20 of the 1985 Act<sup>1</sup>.
2. The premises which are the subject of the application are a high-rise development comprising underground parking, ground floor/reception area, with swimming pool and gym and 52 floors comprising 212 apartments and a penthouse.

## **The Background**

3. This application sought an order for dispensation of the consultation requirements in respect of the premises, on the grounds that work which is required is urgent given the health and safety requirements to have a functioning wet riser pump as the development is currently only served by one pump.
4. Four costs estimates have been obtained, and the Applicant wishes to proceed rapidly with the lowest quotation of £34,075 plus VAT.
5. Directions were given in writing on 15.08.2024, setting out the steps to be taken by the Applicant, (including serving the directions on the respondents) for the progress of this case.
6. The Directions at paragraph B stated that -: "...The only issue for the tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of

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<sup>1</sup> See **Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987)**

whether any service charge costs will be reasonable or payable or the possible application or effect of the Building Safety Act 2022.”

(a) The Directions also provided that -: *Those leaseholders who oppose the application must by 20 September 2024 -: complete the attached form and send it by email to the Tribunal; and*

(b) *Send to the applicant/ landlord by email or post a statement in response to the application with a copy of the reply form by email or by post. They should send with their statement copies of any documents upon which they wish to rely.*

b. The Directions also provided that the application would be determined on the basis of written representations in the week commencing 21 October 2024, and that any request for a hearing should be made by 20 September.2024.

c. No request was made for a hearing, and the Tribunal having reviewed the papers are satisfied itself that the matter was suitable to be dealt with on the papers.

### **The Applicant's case**

7. The applicant in their statement of case set out as follows:- “Jaguar’s sub-contractor, Alltype Pump Ltd, completed a strip down of the pump and advised that the impellers were broken. The shaft was worn and damaged and the cast casing was cracked. 7. In addition, the motor was full of water causing the stator to read down to earth. The pump was obsolete and required replacement.8. May 2024, Alltype Pumps Ltd reported that the pump was beyond economical repair and provided a quote for a full pump replacement. The pump and motor would be made special and there was a delivery time of around 6 months from order.9. On balance, the Applicant considered the importance of the works being carried out without delays due to the building’s fire safety systems being compromised.10. In addition, in the event of a fire, the fire brigade would not be able to make use of the wet risers.11. The Applicant approached the contractors Thameside Fire Protection Co Ltd, Pumps & Motors (UK) Ltd and Henshall & Sheehy Support Services Ltd and obtained 3 alternatives quotes.12. The Applicant appointed Jaguar Building Services and its sub-contractor All type Pumps Ltd to carry out the remedial work.”
8. The Applicant set out that the work was urgent due to the health and safety implications of the property being without two wet riser pumps.
9. In their written submissions, the Applicant submitted that there were two factors that the Tribunal needed to consider, firstly the issue was whether

the work was reasonable, and secondly whether dispensing with the consultation requirements would be prejudicial to the respondents. The Applicant submitted that there was no prejudice as the work was reasonably required and as they had considered the lowest estimate the costs were not unreasonable.

10. The Applicant had obtained four estimates which ranged from £34,075.00 to £49,530.00. The Applicant stated that they intended to use the lowest estimate, as the work was compatible with obtaining good value for the Respondents.
11. In paragraph 25 of the Applicant's submission, they set out that "The need for the works depended on the fact that the wet riser is an essential part of a building's fire protection system, which must be accessible and functional for firefighting purposes at all times".
12. The Applicant provided the Tribunal with a copy of the lease however the Tribunal has not considered whether the work undertaken is payable in accordance with the terms of the lease.

### **The Respondent's Case**

13. The Tribunal received no written objections a written objection to the costs of the work from the leaseholders.

### **14. The tribunal's decision and reason for the decision**

- I. The Tribunal having considered all the circumstances in this case and has decided to dispense with the consultation requirements.
- II. The Tribunal has considered the lease however, it makes no findings as to whether on a proper construction of the lease the sums due are payable by the leaseholders.
- III. The Tribunal was provided with four quotes, the quote provided by set out that they had visited the site and had determined that the work needed was as follows:- "... to attended site to remove fire pump for overhaul. On stripping down pump, we found pump in very poor condition. Impellers broken, shaft worn and damaged, cast casing cracked. This pump is obsolete and requires replacing. The motor was full of water causing stator to read down to earth. A completely new pump and motor is required. We would like to offer the following.2x skilled and 2x unskilled labour attending site in normal working hours. Removing old motor and pump base. Off-loading new pump and motor. Stripping down and transporting to pump room. Rebuilding pump and motor in position. Wire up motor Open valves venting pump. Testing leaving site job complete."
- IV. The Tribunal noted that its jurisdiction in this matter is limited to the scope as set out in Section 20ZA and as discussed by the court in *Daejan -v- Benson (2013)* which requires the Tribunal to decide on

whether the leaseholders would if dispensation is granted suffer any prejudice. The Tribunal has carefully considered the estimates which were provided. The Tribunal has no information before it that the work was overpriced or that the work was either unnecessary in its scope or sub-standard.

- V. As such it has not found that the Respondents would suffer prejudice as result of not being consulted under Section 20 of the Landlord and Tenant Act 1985.
  
- VI. Although the Tribunal does not find that there is any prejudice to the dispensation being granted, The Tribunal would note that the limit in its jurisdiction has meant that it has not considered whether the work was within the scope of the repairing covenant in the lease, **As such nothing in the Tribunal's decision deals with the reasonableness or payability under the lease of the work in issue.**
  
- VII. The leaseholders will of course enjoy the protection of section 27A of the 1985 Act so that if they consider the costs of the work are not reasonable (on the grounds set out above or any other ground) they may make an application to the tribunal for a determination of their liability to pay the resultant service charge.
  
- VIII. **However, the Tribunal is satisfied that in all the circumstances in this application it is reasonable to grant dispensation**
  
- IX. No applications were made for costs before the tribunal.

**Judge** Daley

**Date:** 25.10.2024

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **Section 27A**

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
  - (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
  - (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

#### **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  - (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  - (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

## 1. S20ZA Consultation requirements: supplementary

- (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—
    - (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. [...]
2. The relevant Regulations referred to in section 20 are those set out in Part 2 of Schedule 4 of the Service Charge (Consultation etc) (England) Regulations 2003.