



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

**Case Reference** : **LON/00BK/LDC/2024/0241**

**Property** : **21-23 Buckingham Palace Road and 15-16 Warwick Row**

**Applicant** : **R G Securities (No3) Limited**

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

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

**Tribunal Members** : **Judge Daley**

**Date and venue of Paper Determination** : **29 October 2024, remote**

**Date of Decision** : **29 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 fire alarm extension, fireproofing work and fire door remedial work.**
- ii. Subject to the terms set out in III) of the Tribunal decision.**
- iii. 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 15 August 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 two buildings 21-23 Buckingham Road which comprises 6 residential apartments and two commercial units. 15-16 Warwick Row comprises 8 residential units. There is a non-shared courtyard between.

## **The Background**

3. This application sought an order for dispensation of the consultation requirements in respect of the installation of an interlinked fire alarm to support the change in the premises fire evacuation strategy to deal with the compartmentation strategy of the premises and the fire door. A notice of intention was served on 29 July 2024.
4. Directions were given in writing on 3.09.2024, setting out the steps to be taken by the Applicant, (including serving the directions on the respondents) for the progress of this case.
5. The Directions at paragraph C 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 whether any service charge costs will be reasonable or payable.
  - (a) The Directions also provided that -: *Those leaseholders who oppose the application must by 1 October 2024 -: complete the attached form and send it by email to the Tribunal; and*

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

(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.*

6. The Directions also provided that the application would be determined on the basis of written representations in the week commencing 28 October 2024, and that any request for a hearing should be made by 15 October 2024.
7. 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**

8. On 17 October 2024, the Applicant filed a bundle comprising 104 pages, the Tribunal was satisfied that there was sufficient information before it to consider this matter on the documents before it. The applicant's case is set out in their application together with a report from Karntek conducted on 10 July 2024. The report dealt with compartmentation of the flats in the event of fire.
9. The report noted that there is a current risk of rapid smoke rising throughout the buildings rendering the stairwell untenable in the event of a fire. There was also combustible material in the stairwell.
10. In their application the applicant stated that Dispensation is sought so that we can urgently resolve the fire safety issues noted within the site, namely fire stopping fire door remedial works, and the installation of interlinked fire alarm system to support the change in fire evacuation strategy.
11. On 29 July 2024, the Applicant's agent wrote to the tenants informing them of the need to undertake the work as part of the stage 1 consultation process. In this letter the tenants were informed that there was the need to undertake work in respect of the fire alarm extension, fireproofing works and remedial work to the fire door.
12. The applicant has not informed the Tribunal of the costs of the work.
13. 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 Tribunal has also made no findings in respect of whether the work undertaking complies with the Building Safety Act 2022.

## **The Respondent's Case**

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

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

- I. The Tribunal was concerned that the leaseholders have not been provided with an estimate or details of the cost of the work. However, it accepts that the work is necessary for the health and safety of residents at the premises.
- II. The Tribunal has determined that dispensation should only be granted on the following terms.
- III. The Applicant shall within 6 weeks of the date of this determination On or by **15 December 2024**, provide the leaseholders with estimates, or details of the likely cost of the work.
- 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 issues in this case and has decided that the work is sufficiently urgent to outweigh any prejudice to the tenants in not being consulted.
- 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. 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.
- VII. 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.**
- VIII. **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:** 29.10.2024

### **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.

### **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 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).