



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

Case reference : **LON/00AW/LDC/2024/0036**

Property : **Flats 1-21, Royal Avenue House,
London, SW3 4QD**

Applicant : **Northumberland & Durham Property
Trust Limited**

Representative : **Grainger Residential Management
Limited**

Respondents : **The lessees listed in the schedule to
the application**

Type of application : **To dispense with the requirement to
consult leaseholders**

Tribunal Member : **Judge N Hawkes**

London Panel : **10 Alfred Place, London WC1E 7LR**

**Date of paper
determination** : **1 November 2024**

DECISION

Decision of the Tribunal

The Tribunal determines, pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it is reasonable to dispense with the statutory consultation requirements in respect of the work which forms the subject matter of the Applicant's application dated 8 February 2024.

Background

1. A senior Block Manager at Grainger Residential Management Limited ("Grainger") has applied to the Tribunal under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for dispensation from the consultation requirements contained in section 20 of the 1985 Act in respect of certain qualifying works to Flats 1-21, Royal Avenue House, London, SW3 4QD ("the Property"). Northumberland & Durham Property Trust Limited is the head lessee of the Property and the residential lessees' immediate landlord. Cadogan Estates is the freehold owner of the Property.
2. It is the lessee's immediate landlord that that is subject to the statutory consultation requirements. Northumberland & Durham Property Trust Limited should therefore have applied for dispensation from those requirements pursuant to section 20 of the 1985 Act. Accordingly, Northumberland & Durham Property Trust Limited has been substituted as landlord (represented by its managing agents, Grainger).
3. The Tribunal has been informed that the Property is a purpose-built block containing twenty flats spread over five floors and situated above commercial units, including Itsu.
4. The Applicant has applied for retrospective dispensation from the statutory consultation requirements stating:

"This is a retrospective application for dispensation of the Section 20 Consultation process as the work has already been carried out due to the urgent nature. A leak occurred in Itsu below the residential units in October 2023 causing flooding into the prep area and store room of the restaurant. This occurred during busy lunch time service and Itsu had to close during this time creating a loss of earnings.

The Managing Agent at the time, MLM, arranged for a contractor to attend and they found a large slit on the downpipe. Their contractor could not attend to carry out the work in the timely manner so at this stage, to prevent further closure and disruption to Itsu, the Freeholder (Cadogan) arranged for their contractor to attend to repair the pipe.

We seek dispensation as the work has been carried out and the invoice is outstanding. Due to the urgent nature of the leak, there was no time to carry out full Section 20 Consultation.

The invoice is for £15,984."

5. The application is dated 8 February 2024, and the Respondent lessees are listed in a schedule to the application. Directions of the Tribunal were issued on 1 July 2024 (“the Directions”).
6. The Directions included provision that this application would be determined on the papers unless an oral hearing was requested. No application has been made by any party for an oral hearing. This matter has therefore been determined by the Tribunal by way of a paper determination on 1 November 2024.
7. The Tribunal did not consider an inspection of the Property to be necessary or proportionate to the issues in dispute.

The preliminary Issue

8. On 7 October 2024, a Legal Officer made an order which provides as follows:
 1. *Following the Directions of 1st July 2024 in which paragraph 4 required the Applicant to provide their bundle by 12th August 2024, this is a formal Notice from the Tribunal.*
 2. *On 16th July 2024 the Tribunal received an email from Ms Walsh of Grainger PLC stating that she would be taking over case management from Ms Georgiades, who had recently left the company. Case officer Cheryl Reid responded to Ms Walsh on 17th July 2024 and attached the Tribunal Directions dated 1st July 2024.*
 3. *On 18th July 2024 Ms Walsh emailed the Tribunal to confirm that Direction 1 (service of documents) had been complied with.*
 4. *The Tribunal issued a letter on 27th September 2024 alerting the Applicant to their non-compliance of direction 4 by the required deadline. The letter requested a response by 4th October 2024 which outlined why the Applicant had not complied, what action they intended to take to remedy the breach, and why the application should not be struck out.*
 5. *A response was received from Ms Walsh on 2nd October 2024, in which she states that she did not receive the Tribunal Directions sent by Cheryl Reid on 17th July.*
 6. *It is clear from the Tribunal’s records that Ms Walsh did in fact receive those directions as her email dated 18 July 2024 confirming compliance with service was in direct response to that from Ms Reid, as shown in the email chain.*
 7. *Nor has Ms Walsh set out what it is that the Applicant intends to do to remedy the breach, i.e. provide the Tribunal with the bundle.*

8. Ms Walsh has therefore failed to explain why the Directions have not been complied with and to provide any meaningful action taken to remedy this breach.

9. The Tribunal is therefore minded to strike out your application on the following grounds, namely that:

(i) you have failed to comply with the Tribunal's directions;

(ii) you have failed to co-operate with the Tribunal, such that the Tribunal cannot deal with the proceedings fairly and justly; and

10. Both parties may make written representations on the question whether the application should be struck out.

11. Any such representations must be made in writing to the Tribunal by no later than 21st October 2024, to be sent by email to London.rap@justice.gov.uk and copied to the other party. If a party does not have access to email, its representations must be sent to the Tribunal and to the other party by first class post by the same date.

12. The Tribunal will then re-consider the matter in the light of any representations received, on or after 28th October 2024, and may strike out the case without further notice, or give further directions, as appropriate.

9. On 25 October 2024, Grainger sent the Tribunal, by email, the documents which are relied upon by the Applicant in support of this application. However, these documents were sent as a number of unindexed and unpaginated email attachments despite the fact that the Directions clearly expressly require the Applicant to provide “a single, digital, indexed and paginated Adobe PDF bundle”.
10. No satisfactory explanation has been provided for the Applicant's defaults and the Applicant remains in breach of the Directions. Accordingly, the conduct of these proceedings on behalf of the Applicant has been wholly unsatisfactory and would potentially justify striking out this application.
11. Having considered the overriding objective pursuant to rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”), the nature and importance of this application to the Applicant, Grainger's apology, and (in particular) the absence of any objection on the part of the Respondents, the Tribunal determines that it would be fair and just to waive the Applicant's breaches of the Directions pursuant to rule 8 of the 2013 Rules. However, it should be noted that this decision was finely balanced and that a party who, without good reason, repeatedly breaches the Tribunal's Directions runs a very real risk of their application being struck out.

The Respondents' case

12. None of the Respondents has submitted a reply form to the Tribunal and/or has made representations to the Tribunal opposing the Applicant's application for dispensation from the statutory consultation requirements.

The Tribunal's determination

13. Section 20 of the 1985 Act provides for the limitation of service charges in the event that statutory consultation requirements are not met.
14. The consultation requirements apply where the works are qualifying works (as is the case in this instance) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.
15. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003.
16. Section 20ZA of the 1985 Act provides that, where an application is made to the Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements. In determining this application, the Tribunal has considered *Daejan Investments Ltd v Benson* [2013] UKSC 54, [2013] 1 WLR 854.
17. In all the circumstances and having considered:
 - a. the Applicant's application;
 - b. the evidence filed in support of the application; and
 - c. the fact that none of the Respondents has submitted a reply form to the Tribunal and/or has made representations to the Tribunal opposing the Applicant's application for dispensation from the statutory consultation requirements;

the Tribunal determines, pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it is reasonable to dispense with the statutory consultation requirements in respect of the work which forms the subject matter of the Applicant's application dated 8 February 2024. The Tribunal is satisfied on the balance of probabilities that, due to the urgent need to carry out the proposed work, it was not practicable to comply with the statutory consultation requirements in this instance.

18. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

Judge N Hawkes

Date: 1 November 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 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).