



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

Case reference : **LON/00AF/LDC/2024/0193**

Applicant : **Colview Court (Mottingham Lane
Eltham) Residents Company Limited**

Representative : **Hindwoods Chartered Surveyors**

Respondents : **The long leaseholders at the property**

Property : **Colview Court, Mottingham Lane,
London, SE9 4RP**

Tribunal : **Judge N O'Brien**

Date of Decision : **16 December 2024**

DECISION

Decision of the tribunal

1. The Tribunal unconditionally grants the application for retrospective dispensation from the statutory consultation requirements in respect of the subject works namely emergency repair works to the brickwork to the fascias of the upper exterior of the building more particularly described in the application.

The Application

2. The Applicant freeholder has applied pursuant to section 20ZA of the Landlord and Tenant act 1985 (LTA 1985) for dispensation from the statutory consultation requirements in respect of works to the subject premises. The premises consist of a single purpose built block containing 14 flats, with a car park. The Applicant's case is essentially that it did not comply with the relevant statutory consultation requirements due to the urgency of the works, as bits of masonry had fallen off the building into the car park below. It instructed a contractor to carry out emergency works on 6th June 2024 and on 7th June 2024 it applied for retrospective dispensation. According to the documentation

included in the bundle the total cost of the works inclusive of VAT was £4631.46 with an additional £1200 for supplying the required scaffolding.

3. By directions dated 19 September 2024 the Tribunal directed that the Applicant should, by 26 September 2024, send to the leaseholders and the residential sub-lessees and any recognised tenants association the application and the directions by email or post and affix them to a prominent place in the common parts of the property. The Applicant was also required to provide the Tribunal with details of all leaseholders, including their email addresses. The applicant confirmed by email sent on 7 October 2024 that it had served the required documentation by email on each leaseholder and had placed copies of the same on the notice boards in the block.
4. The directions provided that if any leaseholder or sublessee objected to the application, he or she should inform the Applicant and the Tribunal by 31st of October 2024, with any reply by the Respondent to be filed and served by 15 November. The Tribunal received no objection to the application from any of the Respondents.
5. The directions provided that the Tribunal would decide the matter on the basis of written representations unless any party requested a hearing. Neither the Applicant nor Respondents have requested a hearing.
6. **This determination relates to the emergency repairs to the brick fascia to the building and does not concern any other works. It does not relate to whether or not the cost of the works was reasonable or reasonably incurred.**

Legal Framework

7. The Service Charges (Consultation Requirements)(England) Regulations 2003 set out the consultation process which a landlord must follow in respect of works which will result in any leaseholder contributing more than £250 towards the cost. In summary they require the Landlord to follow a three-stage process before commencing the works. Firstly the Landlord must send each leaseholder a notice of intention to carry out the works and give the leaseholders 30 days to respond. Then the Landlord must send out details of any estimates and permit a further 30-day period for observations. Then, if the landlord does not contract with a contractor nominated by the leaseholders or does not contract with the contractor who has supplied the lowest estimate, it must service notice explaining why.
8. Section 20ZA of the LTA 1985 provides:

“Where an application is made to the appropriate tribunal for a determination to dispense with any or all 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”.

9. In *Dejan Investments Ltd v Benson and others [2013] UKSC 14* the Supreme Court held that in any application for dispensation under s20ZA of LTA 1985 the Tribunal should focus on the extent, if any, to which the leaseholders are or would be prejudiced by either paying for inappropriate works or paying more than would be reasonable as a result of the failure by the landlord to comply with the Regulations. The gravity of the landlord’s failing or the reasonableness of its actions are only relevant insofar as they are shown to have caused such prejudice. The evidential burden of identifying relevant prejudice lies on the tenants but once they have raised a credible case of prejudice, the burden is then on the landlord/applicant to rebut it.

The Applicant’s Case

10. The Applicant’s case is that dispensation should be granted because the works were urgent due to the danger the defective brickwork posed to anyone in the car park. The Tribunal notes that one leaseholder has responded to the application by emailing the Applicant’s agent to say that they consider that the cost of the works was excessive. He has not formally opposed the application.

The Tribunal’s decision

11. The Tribunal determines that it will grant dispensation in relation to the works. The Tribunal does not consider that the leaseholders have been prejudiced by the Applicant’s decision not to follow the s.20 consultation process in respect of the repairs to the brickwork fascia, and none have objected to the application.
12. The Applicant is reminded that, as stated in paragraph 9 of the directions, it is the responsibility of the Applicant to serve a copy of this decision on all the affected lessees.

Name: Judge N O’Brien

Date: 16 December 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).