



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

Case Reference : **CAM/22UQ/LDC/2024/0055**

HMCTS : **Paper**

Property : **Harris Green, Flitch Lane, Great Dunmow
CM6 1FP**

Applicant : **Harris Court (Dunmow) Management
Limited**

Representative : **Ringley Law**

Respondent : **All Tenants of dwellings who may be liable to
contribute towards the cost of the relevant
works 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 : **13 September 2024**
Date of Directions : **6 November 2024**
Date of Decision : **12 December 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 Tenants.

Reasons

The Application

3. On 13 September 2024 the Applicant and its Representative applied for retrospective dispensation from the statutory consultation requirements in respect of qualifying works which are remedial works to fire doors at the Property. It was said that these works were required as a matter of urgency due to the doors not meeting the requirements of the Building Safety Act 2023 in respect of fire safety. It was considered essential to carry out the works as soon as possible. The works were completed in late August 2024 by Ark Fire Protection at a cost of £5,055.25 including VAT.
4. The Applicant is the Management Company under the Lease referred to therein as the "Company". The Representative is a firm of chartered surveyors instructed by the Applicant. The Property is a purpose-built block of 14 flats. The total cost of the qualifying work exceeds the threshold of £250.00 per unit which requires the Applicant to consult the Tenants in accordance with the procedure required under section 20 of the Landlord and Tenant Act 1985.
5. Directions were issued on 6 November 2024 which stated that the Application would be determined on or after 9 December 2024 based on written representations and without an inspection, unless either party made a request for an oral hearing by 25 November 2024. No request was received.
6. The Directions required the Applicant to send by 15 November 2024 to each of the Respondent Tenants, by hand delivery or by first class post and by email, if practicable, copies of:
 - i. The application form without the list of tenants' names and addresses;
 - ii. The Directions;
 - iii. A clear concise description of the relevant works for which dispensation is sought;
 - iv. The estimate of the cost of the relevant works, including any professional fees and VAT;
 - v. 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 14 November 2024 the Applicant's Representative confirmed that this Direction had been complied with by sending the relevant documents to the Tenants by recorded first class delivery (postage receipts provided) and by email (copy provided).

8. If the Respondent Tenants wished to make representations the Directions required them to do so via an attached reply form by 26 November 2024. 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,
 - Application to the Tribunal
 - List of Tenants
 - Tribunal Directions
 - Applicant's confirmation regarding compliance with Direction 2b)
 - Quotation from the contractor engaged
 - Statement by the Susi Jay of Ringley Chartered Surveyors, the Applicant's RepresentativeThese together set out the Applicant's case.
13. The relevant provisions of the Lease are:
 - a) Under Clause 1.1.1
the "Estate" is defined as "all land and buildings"
the Common Parts are defined as "all those parts of the Estate enjoyed or used in common by the tenants ...including in particular all those parts of the Estate for the maintenance repair redecoration and renewal of which the Company is responsible under Schedule 4" of the Lease
 - b) Under Schedule 4 paragraph 1(c) the Common Parts include:

“The main entrance common passages landings and staircases each separate Estate entrance door...”

- c) Under Schedule 4 paragraph 10:
The Company will do and execute or cause to be done and executed all such works as under or by virtue of any Act or Acts of Parliament for the time being in force or any regulations or orders made pursuant thereto shall be directed or necessary to be done or executed upon or in respect of the Common Parts or any part thereof...”
 - d) Under Clause 5.7.2 the Tenants covenant to:
“Contribute and pay on demand the proportionate part set out in Schedule 5 of all costs charges and expenses from time to time incurred or to be incurred by the Company in performing and carrying out the obligations and each of them under Schedule 4...”
- 14. The Application Form and Statement by Susi Jay of the Applicant’s Representative stated in summary that the qualifying works are remedial works to fire doors at the Property. It was said that the works were required as a matter of urgency due to the doors not meeting the requirements of the Building Safety Act 2023 in respect of fire safety. It was considered essential to carry out the works as soon as possible. The works were completed in late August 2024 by ARK Fire Protection at a cost of £5,055.25 including VAT.
 - 15. A copy of the invoice from Ark Fire Protection, the contractor engaged, was provided. This set out in detail the works required in respect of the communal fire doors together with the terms and conditions of the contractor. It was originally believed from the quotation that the cost would be £5,055.25 including VAT. However, the invoice is slightly lower at £4,995.25 including VAT as some of the work initially included was found not to be necessary.
 - 16. In accordance with the Directions on 5 November 2024 the Applicant’s Representative confirmed that the Tenants had been informed of the Application and given a copy of the Directions which stated that if the Respondent Tenants wished to make representations, they could do so via an attached reply form by 21 November 2024. No representations were received.
 - 17. The Applicant and its Representative considered the work to be so urgent in order to comply with the legislation and ensure fire safety no consultation under section 20 of the Landlord and Tenant Act 1985 took place.

Findings

- 18. The Tribunal finds from the Lease that the Applicant is obliged to carry out the works to comply with the legislative requirements and that these are chargeable to the Tenants through the Service Charge.

19. The Tribunal from its knowledge and experience is aware of the concerns that landlords, management companies and managing agents have regarding complying with legislation regarding fire safety in buildings to protect tenants following the Grenville Tower fire. It is imperative that such work is done.
20. The Respondent Tenants were given an opportunity to make representations in the course of the procedure for dispensation. They also can make an application under section 27A of the Landlord and Tenant Act 1985 if they considered the cost was unreasonable. Therefore, considering the necessity and urgency of the work and notwithstanding that no section 20 consultation procedure was followed, the Tribunal finds that the Tenants have not suffered any relevant prejudice by the failure to carry out the consultation procedure.

Determination

21. 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 tenants 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.

22. 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).
23. The Tenants 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 Tenant 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.
24. The Applicant shall serve a copy of the Tribunal's decision on dispensation, together with the relevant appeal rights attached, to all Tenants.

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.