|  |  |  |
| --- | --- | --- |
| Crest |  | FIRST-TIER TRIBUNAL**PROPERTY CHAMBER (RESIDENTIAL PROPERTY)** |
| **Case reference** | **:** | **LON/00BK/LDC/2025/0661** |
| **Property****Applicant** | **:****:** | **Second Floor Flat, Third Floor Flat and Fourth Floor Flat,** **136 Harley Street, London,W1G 7JZ****Howard de Walden Estates Limited** |
| **Representative** | **:** | **Warners Law LLP (Reference: JAJS/HOW316/234)** |
| **Respondents** | **:** | **Adrian Raoul Elbaz (1)****E Barbat Puigdomenech (2)****Paul Neville and Patricia Neville (3)** |
| **Type of application** | **:** | **For dispensation under section 20ZA of the Landlord & Tenant Act 1985** |
| **Tribunal member** | **:** | **Mr A Parkinson MRICS** |
| **Date of decision** | **:** | **11 June 2025** |

|  |
| --- |
| **DECISION** |

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was P:PAPER REMOTE. The Directions provided for the application to be determined on the papers unless any party requested a hearing. No party has requested a hearing. The Applicant has filed a bundle in in support of the application.

***Introduction***

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) for *retrospective* dispensation with the consultation requirements in respect of the following works:-

Decoration to the common parts and front elevation £81,800.96

Lift renewal £144,728.50

**Total £226,530**

required for 136 Harley Street, London,W1G 7JZ (“the property”).

2. The Applicant is the freeholder of the property and the Respondents are the long leaseholders of the three apartments. The property is a five storey mixed use period property comprising medical accommodation at basement, ground and first floor levels with three residential apartments on the second, third and fourth floors.

1. By an application dated 20 February 2025 and received by the tribunal on 24 February 2025 the Landlord applied for retrospective dispensation from the statutory duty to consult in respect of decoration to common parts and the front elevation and lift renewal works. The application has been issued by Warners Law LLP as the Landlord’s representative.

4. On 3 April 2025 the Tribunal issued Directions. By 17 April 2025 the applicant was directed to send to each of the leaseholders (and any residential sublessees) and to any recognised residents’ associations, by email, hand delivery or first-class post:

• copies of the application form (excluding any respondents’ telephone numbers or email addresses, or any separate list of respondents’ names and addresses) unless already sent by the applicant to the leaseholder/sublessee;

• If not already detailed in the application form a brief statement to explain the reasons for the application, and

• the directions;

• Display a copy of these in a prominent place in the common parts of the Property (again, excluding any respondents’ telephone numbers or email addresses, or any separate list of respondents’ names and addresses); and

• By 24 April 2025 send an email to the tribunal at London.Rap@justice.gov.uk to confirm that this has been done and stating the date(s) when this was done.

On 17 April the applicant’s representative confirmed that it had complied with this Direction.

5. Any leaseholder who opposed the application was directed to complete a Reply Form which was attached to the Directions and send it both to the tribunal and to the applicant by 1 May 2025. None of the leaseholders returned a completed Reply Form or opposed the application.

6. The Applicant has provided a Bundle of Documents (173 pages) (“the bundle”) in support of the application. This includes various documents including the leases for the three apartments within the property the Applicant’s Statement of Case, and copies of the consultation notices being the notice of intention and statement of estimates in relation to the proposed works.

7. It is the Applicant’s case that the leaseholders of the second floor flat and fourth floor flat were given notice of the proposed works via a notice of intention dated 30 June 2022 and that the notice of intention was posted to the leaseholder of the third floor flat at the last known correspondence address for the leaseholder. Also that the that the leaseholders of the second floor flat (First Respondent) and fourth floor (Third Respondent) were given notice of the statement of estimates dated 7 December 2022 which was posted to the leaseholder of the third floor flat (Second Respondent) at the last known correspondence address for the leaseholder on 12 December 2022.

8. The Applicant states that the Second Respondent has denied having received notice of the proposed works. The Applicant also confirms that it cannot prove service of notice on the Second Respondent but that the notices were posted to the last known correspondence address of the Second Respondent.

9. The works commenced on or about 31 July 2023 and were completed in November 2023. The total cost of the works was £226,530.

10. It is the Applicant’s case that it is reasonable to dispense with the dispensation requirements as the notices were served on the First Respondent and Third Respondent and posted to the Second Respondent via the last known correspondence address for this leaseholder.

11. It is the Applicant’s case that the Second Respondent has suffered no real or substantial prejudice as a result of any failure to provide notices to the leaseholder.

***Relevant Law***

12. Section 20ZA (1) of the Act provides:

“Where an application is made to the appropriate 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.”

13. **The only issue which this Tribunal has been required to determine is whether or not it is reasonable to dispense with the statutory consultation requirements in relation to the Decoration to the common parts and front elevation and lift renewal. This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

***Decision***

14. As directed, the Tribunal’s determination “on the papers” took place on 9 June 2025 and was based solely on the documentary evidence filed by the Applicant. As stated earlier, no objections had been received from any of the Respondents.

15. The relevant test to be applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.

16. The issue before the Tribunal was whether dispensation should be granted in relation to the requirement to carry out statutory consultation with the leaseholders regarding the decoration to common parts and front elevation and lift renewal works. The Tribunal is not concerned about the actual cost that has been incurred.

17. The Tribunal is satisfied that it is reasonable to grant retrospective dispensation from the statutory consultation requirements in relation to the decoration to the common parts and front elevation and lift renewal works. There is no suggestion that any prejudice has arisen.

18. The Directions make provision for the service of the Tribunal’s decision. The tribunal will email a copy of its decision to the applicant. The applicant is responsible for serving a copy of the Tribunal’s decision on the respondents.

19. It should be noted that in granting this part of the application, the Tribunal makes no finding that the scope and estimated cost of the repairs are reasonable.

|  |  |  |  |
| --- | --- | --- | --- |
| **Name:** | Mr A Parkinson MRICS | **Date:** | 11 June 2025 |

**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).

**Appendix of relevant legislation**

**Landlord and Tenant Act 1985 (as amended)**

**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) the appropriate 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.

 **Section 20ZA**

(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.