



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

Case Reference : CHI/29UL/LDC/2020/0071

Property : The Grand, The Leas, Folkestone,
Kent CT20 2LR

Applicant : Ms Alison Mooney

Respondents :

Tribunal Member : Judge M Loveday

Date of hearing/venue : Decision without a hearing

Date of decision : 11 January 2021

**DECISION ON AN APPLICATION UNDER SECTION 20ZA OF
THE LANDLORD AND TENANT ACT 1985**

Introduction

1. This is an application to dispense with consultation requirements for major works under s.20ZA Landlord and Landlord and Tenant Act 1985. On 14 October 2020, the Tribunal directed that the matter should be determined without a hearing under rule 6A of the Tribunal Procedure Rules 2013. For the reasons given below, the Tribunal determines that the requirements of Pt.2 of Sch.4 to the Service Charges (Consultation Requirements) (England) Regulations 2013 (“the Regulations”) should be dispensed with in relation to the fire enforcement works set out in the Schedule of Work dated November 2019 attached to the application.

Background

2. The matter relates to The Grand, The Leas, Folkestone, Kent CT20 2LR, which is a large former hotel on the seafront at Folkestone. The Applicant was appointed as Manager under Part II Landlord and Tenant Act 1987 by a Management Order dated 5 July 2018.
3. There has been an extensive history of litigation involving the property, including (most recently) further directions given by the Tribunal on 29 May 2020 (CHI/29UL/LAM/2019/0017) and decisions in relation to applications to discharge or vary the Management Order dated 11 August 2020 (CHI/29UL/LVM/2020/0001) and 16 December 2020 (CHI/29UL/LVM/2020/0008). Each of these touched on the need to undertake urgent major works to the premises. The last decision has extended the Applicant’s appointment by a further three years from January 2021.
4. The application is dated 23 September 2020 and seeks dispensation from the requirement to consult lessees about fire safety works under section 20ZA of the Landlord and Tenant Act 1985. Attached to the application was a Schedule of Work dated November 2019 running to some 100 pages, and further extensive tender documentation. The application listed:
 - (a) Hallam Estates Ltd, as landlord.
 - (b) Some 44 lessees, as interested parties.
 - (c) The Association of Residents in the Grand, as recognised tenants’ association under s.29 Landlord and Tenant Act 1985.
5. On 14 October 2020, the Tribunal issued revised directions that the matter should be determined without a hearing under rule 6A of the Tribunal Procedure Rules 2013. The Tribunal treated the landlord and all the lessees as Respondents. At para 10 of the directions, it directed that if any of the Respondents wished to oppose the application, they should complete a reply form by 18 November 2020. It further directed that “those parties not returning the attached form and those agreeing to the application will be removed as Respondents to the application and the Tribunal will not send [them] a copy of their determination”.
6. No form has been received from the landlord. The following interested parties returned forms in compliance with the directions:

- (a) Mr James Ashley and Ms Inna Ashley of the Dudley Suite submitted a form dated 29 October 2020 supporting the application.
 - (b) Ms Toni Williams of the Marlborough Suite submitted a form dated 29 October 2020 opposing the application. However, by an email dated 31 December 2020, Ms Williams informed the Tribunal that she wished to withdraw this objection.
 - (c) Mr Michael Stainer and Mrs Doris Stainer, who stated they were the lessees of some 19 residential suites, submitted a form dated 26 November 2020. They also opposed the application.
7. The Applicant has provided a witness statement dated 18 December 2020 which states *inter alia* that the leases of the various residential suites referred to by Mr and Mrs Stainer now vest in their trustee in bankruptcy. The trustee is named in the application as Mr Adrian Dante of Macintyre Hudson LLP. The Applicant's witness statement also says that Hallam Estates was placed into administration by the High Court on 17 December 2020.
8. In accordance with para 10 of the directions dated 29 October 2020 and under Rule 10 of the Tribunal Procedure (First Tier-Tribunal) Property Chamber Rules 2013, the Tribunal makes the following orders in relation to the addition and removal of parties:
- (a) Mr and Mrs Ashley did not object to the application. In accordance with the previous directions, they are not treated as Respondents.
 - (b) In view of Ms Williams's email, the Tribunal does not treat her as a Respondent.
 - (c) Mr and Mrs Stainer have no current interest in the premises. In any event, their form was submitted after the date set out in the previous directions and they have not applied for relief from sanctions. They will not therefore be treated as parties to the application.
 - (d) Mr Dante has not submitted a form objecting to the application, and he will also not therefore remain as a party to the application.
9. As a result of the Tribunal's previous directions, no party has been joined as a Respondent.

The Applicant's case

10. The Application stated that the work that is to be carried out involves the second and third phases of fire enforcement works to the premises as described in the Schedule of Work. Broadly speaking it involves:
- (a) Fireproofing of communal doors on the south side of the building (north side doors/protected route completed).
 - (b) Works to fireproof cupboards and risers in the common parts of both north and south residential.
 - (c) Works to individual flats including fireproofing of front doors to provided 30min (minimum) fire resistance.

- (d) Installation of closers.
 - (e) Alarm upgrades where the decibels at bedhead are insufficient.
 - (f) Work to associated glazed panels.
11. The Applicant consulted by issuing a notice of intent under para 1 of Pt.2 of Sch.4 to the Regulations in December 2019, with the intention of progressing the work and hopefully completing within the period of the original fire service deadline on the enforcement notices. But she stressed the continued litigation with Mr Stainer and Hallam Estates and the complications of Covid-19 pandemic. These meant there was insufficient funding to progress the works and it was not a “viable proposal” to progress such works around elderly and vulnerable people. The Applicant also produced a copy of a letter to the lessees dated 17 February 2020 about the “second phase of the works” and a notice of the same date. The notice in turn referred to a tender analysis from the quantity surveyors Cyril Orchard Group relating to the “proposed internal fire precautions upgrade (phase 2)”. Unfortunately, parts of the tender analysis were missing, but it was clear that at least 3 tenders had been received. The report recommended a tender from Sprinks Construction Ltd for £166,562 and there was an email from Mr Philip Reddecliffe at Cyril Orchard Group confirming he was confident the work was competitively tested.
12. The Applicant’s witness statement argued that:
- (a) Since the outbreak of COVID-19 in the UK, it had been impossible to carry out the highly invasive works required to each apartment in the south side of the Grand which among things, involves the removal of front doors while they are upgraded. Many residents are over 70 and extremely vulnerable.
 - (b) The works were now facing further delay, as Kent was in Tier 4 lockdown.
 - (c) After discussions with the Applicant’s quantity surveyor, and by agreement with the contractors, she was satisfied there was nothing to be gained by retendering this project, and she could not justify the costs of such a process. Furthermore, she could not carry out such a process during the Tier 4 lockdown.
 - (d) Further delay would cause serious issues with the Kent Fire Service who thus far had been extremely understanding in the light of the difficulties.
 - (e) The legally recognised tenants’ association (which represented 34 out of 45 qualifying apartments) supported this application by resolution. A copy of a resolution by the Committee of the was provided.
13. The reasons for seeking dispensation were that:
- (a) There was no prejudice within the principles set out in *Daejan v Benson* [2013] UKSC 14.
 - (b) The work was originally scheduled to start in March 2020 as agreed with Kent Fire Services. It was only deferred due to the Covid-19 pandemic.
 - (c) The works had been subject to a competitive tender process.

- (d) The selected contractor, Sprinks, had since increased the quote by 5% because of the split nature of the works. But retendering would only increase these costs.
- (e) There was a need to pre-order materials urgently because of the long lead-in time.
- (f) The works were urgent.
- (g) Making the building safe was paramount.

The Tribunal's determination

14. Since the application is not formally opposed, the Tribunal can give its reasons for dispensation fairly briefly. It is satisfied that it is reasonable to dispense with the consultation requirements of Pt.II of Sch.4 to the regulations because:
 - (a) The purpose of the s.20 consultation requirements is to ensure the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate: *Daejan v Benson* at para 44.
 - (b) The works are urgent, in that they are to meet the requirements of fire safety notices and Kent Fire Services.
 - (c) The Applicant has complied with Pt.II of Sch.4 to the regulations in substance, if not in form. She has given both a notice of intention under para 1 of Pt.II and a statement of estimates under para 4. The lessees have therefore had a reasonable opportunity to be consulted. Insofar as the Applicant has not complied with the consultation procedure, the extent, quality and cost of the works is not affected by the failure to consult: *Daejan v Benson* at para 45.
 - (d) Reasonable efforts have been made to control costs by using a quantity surveyor and a conventional tender process.
 - (e) There is a reasonable explanation for delays with the works and for any increase in costs - namely lack of funds to prosecute the works and the intervention of the Covid-19 pandemic.
 - (f) The recognised tenants association (and the lessees of one flat who formally responded to the application) support dispensation.
 - (g) The main (if not the sole) question for the Tribunal is whether the lessees have been caused any real prejudice: *Daejan v Benson* at paras 50 and 65-69. It is satisfied there is no real prejudice caused in this case.

15. As explained above, no objectors have been formally joined as Respondents to the application. However, out of overabundance of caution, the Tribunal has in event considered the objections in Mr and Mrs Stainer's response form dated 26 November 2020. None of these objections suggest any "real prejudice" within the meaning of paras 65-69 of *Daejan v Benson*.

16. It should also be stressed that the lessees' rights under ss.19 and 27A of the Landlord and Tenant Act 1985 are unaffected by this decision.

Judge Mark Loveday

11 January 2021

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.