



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

Case Reference : **LON/00BG/LDC/2021/0237**

Property : **69 Johnson Street, London E1 0AQ**

Applicant : **Mrs Sunette Zone**

Respondents : **The leaseholders of the flats within
the property**

Type of Application : **Application under section 20ZA to
dispense with consultation
requirements for a scheme of
Major work**

Tribunal Members : **Judge Daley
Ms Fiona Macleod MCIEH**

**Date and venue of
Paper Determination** : **17 November 2021 Paper
Determination dealt with remotely**

Date of Decision : **17 November 2021**

DECISION

Decision of the tribunal

- i. The tribunal grants dispensation in respect of the major works relating to fire safety. Which were set out in the application to (i) Providing an appropriate means of fire detection (ii) Ensuring there are adequate emergency routes and plans (iii) Ensure that there are specific fire safety measures which are kept in an efficient state, working order and good repair. (iv) Arrange initial and ongoing maintenance to ensure firefighting measures are kept in an efficient state, working order and good repair as set out in the London Fire Brigade letter dated 27 May 2021.**

- ii. The Tribunal require the Applicant to within 28 days provide (i) a full schedule of the work to be provided in compliance with the London Fire Brigade letter. (ii) Details of the contractors selected to undertake the work. (iii) full details of the cost of the work.**

- ii. The Tribunal makes no order for the cost occasioned by the making of the application.**

The application

1. The applicant by an application, made on 6 September 2021 sought dispensation under section 20ZA of the Landlord and Tenant Act 1985 from part of the consultation requirements imposed on the landlord by section 20 of the 1985 Act¹.
2. The premises which are the subject of the application is a purpose, built block of thirteen flats.

The Background

3. This application, sought an order for dispensation of the consultation requirements in respect of the premises, the grounds upon which the dispensation is sought, is that urgent works are required following a letter from the London Fire Brigade.

¹ See Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987)

4. The application stated that the work needs to be done as quickly as possible to ensure the safety of the property. A notice to carry out the work was served on the leaseholders on 6.09.2021. The letter set out that the cost of the work would be funded from the reserve fund.

Directions by the Tribunal

5. On 21 September 2021, directions were given by the Tribunal
6. Directions were given in writing, setting out the steps to be taken by the Applicant, (including serving the directions on the respondents) for the progress of this case.
7. The Directions at paragraph (4) stated that -: “...The only issue for the tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable.”
 - (i) The Directions also provided that -: *Those leaseholders who oppose the application must by 12 October 2021 -: Complete the attached form and send it by email to the Tribunal; and*
 - (ii) *Send to the applicant/ landlord by email or post a statement in response to the application with a copy of the reply form by email or by post. They should send with their statement copies of any documents upon which they wish to rely.*
8. The Directions also provided that the application would be determined on the basis of written representations in the week commencing 01 November 2021, and that any request for a hearing should be made by 19.10.2021.
9. No request was made for a hearing, and the Tribunal satisfied itself that the matter was suitable to be dealt with on the papers.

The Applicant's case

10. The Tribunal was provided with a bundle comprising 68 pages which included the reasons for the application which were largely set out in the letter of the London Fire Brigade.
11. In the letter dated 27 May 2021 which stated -: “ The Commissioner's Inspectors have recently carried out an inspection of the above-mentioned premises. During the inspection it was noted that some fire safety matters require attention to reduce the risk of fire and/or reasonably ensure the safety of people using the premises. These matters need to be

addressed in order to comply with Regulatory Reform (Fire Safety) Order 2005.

12. The Commissioner's recommendations about the actions that were needed were set out in a schedule which was attached to the letter. The letter set out that the actions should be taken by 14 October 2021, which in broad terms echo the information provided in the application.
13. On 4 November 2021 the Applicant's solicitor Ringley Law confirmed that no challenges to this application were received from the leaseholders.
14. At the time that the applicants submitted their bundle they noted that there were no responses from the leaseholders, either opposing or agreeing to the work.

The tribunal's decision and reason for the decision

- I. The Tribunal has noted that the only issue which it is dealing with is whether it is reasonable to dispense with the statutory consultation requirements, it is not in this application required to make a finding concerning the reasonableness and payability of the work.
- II. However in *Daejan Investment Ltd v Benson* 2013 it was noted in paragraph 54. That " ... the LVT is not so constrained when exercising its jurisdiction under section 20ZA (1) it has power to grant a dispensation on such terms as it thinks fit-provided of course that any such terms are appropriate in their nature and their effect..."
- III. The Tribunal noted that although the London Fire Brigade set out that work was required the schedule cannot be considered to be a precise description of the work that needs to be undertaken, the Tribunal noted that as the schedule contains some obligations which are organisational and as such, by reference to the schedule alone it is difficult to ascertain the cost of the work. The Landlord will need to provide further details, and as a condition of granting dispensation the tribunal is directing the landlord to provide:- (i) the schedule upon which any tender for the work has was provided (ii) details of the contractor (iii) the cost of the work, (iv) details of the time frame in which the work has/ is due to be carried out.
- IV. However, notwithstanding the lack of detailed information the Tribunal considered all of the evidence in detail is satisfied that without the works, the building would be unsafe, and that consultation would

prolong the period in which the leaseholders were living in an unsafe building.

- V. The Tribunal noted that its jurisdiction in this matter is somewhat limited and the scope is set out in Section 20ZA and as discussed by the court in *Daejan –v- Benson (2013)* which requires the Tribunal to decide on whether the leaseholders would if dispensation is granted suffer any prejudice. Although the Tribunal does not find that there is any prejudice to the dispensation being granted. **The Tribunal would note that the limit in its jurisdiction has meant that although the Tribunal has considered whether the work is within the scope of the repairing covenant in the lease, it is for the landlord to satisfy themselves of this and to determine the proportion payable by each leaseholder. As nothing in the Tribunal’s decision deals with the reasonableness or payability under the lease of the work in issue.**
- VI. Further the Applicant **shall within 28 days** provide the Respondent with the answers to the questions that the tribunal has set out in (i) of its decision above.
- VII. The leaseholders will of course enjoy the protection of section 27A of the 1985 Act so that if they consider the costs of the work are not reasonable (on the grounds set out above or any other ground) they may make an application to the tribunal for a determination of their liability to pay the resultant service charge.
- VIII. No applications were made for costs before the tribunal.

Judge Daley

Date 17 November 2021

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 27A

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

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) a leasehold valuation 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.]

1. S20ZA Consultation requirements: supplementary

- (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—
 - (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.
 - (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
 - (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 - (a) to provide details of proposed works or agreements to tenants or the Recognised tenants' association representing them,
 - (b) to obtain estimates for proposed works or agreements,
 - (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
 - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
 - (6) Regulations under section 20 or this section—
 - (a) may make provision generally or only in relation to specific cases, and
 - (b) may make different provision for different purposes.
 - (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament. [...]
2. The relevant Regulations referred to in section 20 are those set out in Part 2 of Schedule 4 of the Service Charge (Consultation etc) (England) Regulations 2003.