



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

Case Reference : CHI/OOHN/LDC/2022/0035

Property : Mildenhall , 25-27 West Cliff Road,
Bournemouth, BH48AX

Applicant : Mildenhall RTE Limited

Respondent : Leaseholders of Mildenhall

Type of Application : Dispensation pursuant to s 20 ZA Landlord and
Tenant Act 1985

Tribunal Members : Judge Shepherd
Colin Davies FRICS

Date of Determination : 10th August 2022

Determination

1. In this case the Applicant, Mildenhall RTE Limited (“The Applicants”) are seeking dispensation from the consultation requirements under Section 20 of

the Landlord and Tenant Act 1985 (“The Act”). The dispensation is sought pursuant to section 20ZA of the Act. The application is opposed by the Respondents who are a number of lessees of premises at Mildenhall, 25 to 27 Westcliff Rd, Bournemouth, BH488X (“The premises”). The premises consist of two blocks: block 1 - flats 1 to 28 and block two- flats 29 to 56. There are three additional flats located at lower ground floor level with the total number of units being 59.

2. The reason for the dispensation application was essentially urgency. The Applicants in their application say that there is a lack of water pressure within both buildings affecting the top three floors of the building with some flats suffering from no water during various times of the day. A surveyor and various water pressure specialists had assessed the problems and determined that new water pumps were required. It was said that the works were urgent because there were poor living conditions in several flats. There had been long term neglect in maintaining the water system and ongoing upgrades required to the building.
3. A sample lease was provided in which the lessee is required to contribute towards the cost of maintaining the premises including the structure of the building including the drains sewers water pipes etc.
4. It is important to note that the dispensation hearing was not dealing with the question of the reasonableness or payability of service charges. It was solely dealing with the question of whether dispensation should be given from the consultation requirements. Leaseholders retain their right to challenge the reasonableness and payability of the costs pursuant to an application under section 27A of the Act.
5. Attached to the application for dispensation were notes of a meeting that took place with leaseholders on the 22nd of January 2022 at St Ambrose Church. The meeting was attended by the director of Mildenhall RTE Limited, Michael

Henderson and a number of leaseholders. At the meeting Mr Henderson described the water pressure problem as a “fly in the ointment” and said that over Christmas 2021 many of the upper floor flats had suffered a serious loss in water pressure and in many cases a loss of water completely. The Applicants had obtained a quote to design a replacement water distribution system from a company called pipe fix but it was very high. Tom Green of Greenwood Associates was asked to approach a water expert contact of his called Ian Brazier. The situation with the water pipe work pressure was now a major problem and additional funds would have to be raised to cover this in the near future. A leaseholder on the 6th floor of the East building said that they did not have any water that and they cannot make a drink and cannot flush their toilets which was a health and safety matter. Generally, their water availability was very intermittent. Another leaseholder mentioned that his flat on the top floor of the West block also did not have any water for long periods of the day and it was quite clear that this water pressure problem needed to be dealt with as a matter of urgency.

6. In an e-mail sent to all leaseholders at Mildenhall the directors of the RTE company wrote confirming that the urgent issue in relation to maintenance of the premises was the water pressure issue. They said this was a very serious problem which had been particularly bad over Christmas. They said that three specialist water engineers had visited Mildenhall and reported to the surveyor Tom Green and to the board. Mr Peter Herbert of Seaforth Services was selected to present his proposal to a special board meeting on the 14th of March. The proposal was to install a new water supply system comprising 3 relatively small sophisticated pumps and a break tank. This would provide a permanent solution and would deliver one bar water pressure to all flats. Two pumps which are extremely quiet would be in use at any one time with the third pump acting as a reserve. They would be situated in the underground garage close to the outer wall which adjoins the moat to the right of the roller shutter door in an unused corner area. The break tank would be positioned outside on a concrete base set in the grass to the right as viewed from the outside of the roller shutter door and it was envisaged that the tank would be

surrounded by a planted area which will in time help to screen its appearance. They said that the provision of water was a basic human necessity and an order had been placed with Seyferth Services Limited as a cost of £123,500 pounds plus vat giving a total cost over £148,200. The funding for this needed to be raised urgently as equipment could not be ordered without stage payments the first of which would be payable within two weeks. The total cost per leaseholder would be approximately £2500 subject to variations in accordance with the individual leases. It was explained that Mildenhall did not have any security against which to raise a loan and most of the equity value lay within the individual leases.

7. Whilst some leaseholders agreed with the proposal a number objected in writing. A broad summary of these objections is as follows:
 - a) Mr and Mrs Slater objected to the short notice to raise the funds and questioned how this position had arisen. They raised issues about the poor performance from the last two managing agents and identified the fact that the leaseholder accounts in the past had made reference to water pressure considerations.
 - b) Karen Budd objected on behalf of her mother Jean Budd saying that the charges had been made without proper explanation and there was no reason why the funds couldn't have been collected over a longer period of time. She said there had been no consultation with the flat owners and the works were not urgent. She said there was only one flat on the top floor which had experienced a total loss of water and this was for only one day. She said that her mother's flat had experienced poor water pressure for many years although this was an inconvenience it never caused her 90 year old mother to feel that she was living in poor living conditions.

- c) Richard MacDonald wrote that whilst he had sympathy with residents suffering a lack of water he could not accept this was an emergency. The issue had been raised numerous times since at least 2017. He said that the leaseholders had been given virtually no information about the details of the issue. He was concerned that Mildenhall had already instructed work prior to applying for dispensation. He said that the break tank would sit at the rear of the flats which would be unsightly and would affect the value of the property. He said there had been no proper consultation.

- d) Jolani Passos objected to the work because of the financial burden being imposed. She said that she wouldn't have bought her flat if she'd known of the forthcoming work.

- e) Merle Greenblatt objected because the directors were aware that there was a problem years ago and nothing was done about it and only now was it decided that it had become an emergency.

- f) Abbey Drysdale opposed the application because procedures had not been correctly followed and decisions had been rushed and communication had been slow and unclear.

- g) Richard Barnes and Jeremy Green objected for a variety of reasons including the lack of time to consider the matter and the cost of the works being substantial.

- h) Matthew and Beverly Tomlinson objected because the cost of the work was substantial and leaseholders were not made fully aware of the scheme amongst other matters.

8. A report by Tom Green dated 16th May 2022 provides an update on the refurbishment of the water supply works. Three new pumps had been installed and all flats now had water and there was constant pressure in accordance with regulations of 1 bar. Further updates were provided thereafter.

The hearing

9. The hearing of the dispensation application took place on 5th July 2022 at Havant Magistrates Court . It took place as a Hybrid hearing with witnesses attending on- line. The Applicants were represented by Tom Green and Michael Henderson. A number of leaseholders also attended on - line and made valuable contributions.
10. Tom Green outlined the background to the application. He said that some top floor flats had lost water completely and other flats had also lost pressure. The original pump in the basement had been decommissioned 17 years ago and pressure had been dropping year on year. A short term solution was to provide a pump set. A long - term solution was to provide a pump set and holding tank. The longer - term solution was being adopted and the work would be completed in 2-3 weeks after the hearing.
11. Mr |Henderson said that two leaseholders had commenced legal proceedings in relation to the water issue. He estimated that 27% of the 59 flats were affected in a variety of ways. The introduction of the break tank had dramatically improved things.
12. Jean Budd said that in her mother's flat a pump had been installed and the water issue had been solved. Mr Green said this effectively robbed water from others above. Ms Budd said the problem had not been addressed for 35 years.

13. Ms Passos also said it was a long standing issue and she had not planned for the expense.
14. Richard Macdonald objected to the position of the pump and the noise. He asked if the pump could be moved. Mr Green said it would cost around £80000 to do this.
15. Mr Henderson confirmed that instalment arrangements for payment would be agreed.

The law

Landlord and Tenant Act 1985,s.20ZA

20ZA Consultation requirements: supplementary

(1) 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.

(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.

Daejan

16. In *Daejan Investments v Benson* [2013] UKSC 14, the landlord was the freehold owner of a building comprised of shops and seven flats, five of which were held by the tenants under long leases which provided for the payment of service charges. The landlord gave the tenants notice of its intention to carry out major works to the building. It obtained four priced tenders for the work, each in excess of £400,000, but then proceeded to award the work to one of the tenderers without having given tenants a summary of the observations it

had received in relation to the proposed works or having made the estimates available for inspection. The tenants applied to a leasehold valuation tribunal under section 27A of the Landlord and Tenant Act 1985 , as inserted, for a determination as to the amount of service charge which was payable, contending inter alia that the failure of the landlord to provide a summary of the observations or to make the estimates available for inspection was in breach of the statutory consultation requirements in paragraph 4(5) of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 so as to limit recovery from the tenants to £250 per tenant, as specified in section 20 of the 1985 Act and regulation 6 of the 2003 Regulations in cases where a landlord had neither met, nor been exempted from, the statutory consultation requirements. The landlord applied to the tribunal under section 20(1) of the Act for an order that the paragraph 4(5) consultation requirements be dispensed with, and proposed a deduction of £50,000 from the cost of the works as compensation for any prejudice suffered by the tenants, which offer they refused. The tribunal held that the breach of the consultation requirements had caused significant prejudice to the tenants, that the proposed deduction did not alter the existence of that prejudice, and that it was not reasonable within section 20ZA(1) of the Act, as inserted, to dispense with the consultation requirements. The Upper Tribunal (Lands Chamber) dismissed the landlord's appeal and the Court of Appeal upheld the Upper Tribunal's decision.

17. The Supreme Court , allowing the appeal (Lord Hope of Craighead DPSC and Lord Wilson JSC dissenting), held that the purpose of a landlord's obligation to consult tenants in advance of qualifying works, set out in the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 , was to ensure that tenants were protected from paying for inappropriate works or from paying more than would be appropriate; that adherence to those requirements was not an end in itself, nor was the dispensing jurisdiction under section 20ZA(1) of the 1985 Act a punitive or exemplary exercise; that, therefore, on a landlord's application for dispensation under section 20ZA(1) the question for the leasehold valuation tribunal was the extent, if any, to which the tenants had

been prejudiced in either of those respects by the landlord's failure to comply; that neither the gravity of the landlord's failure to comply nor the degree of its culpability nor its nature nor the financial consequences for the landlord of failure to obtain dispensation was a relevant consideration for the tribunal; that the tribunal could grant a dispensation on such terms as it thought fit, provided that they were appropriate in their nature and effect, including terms as to costs; that the factual burden lay on the tenants to identify any prejudice which they claimed they would not have suffered had the consultation requirements been fully complied with but would suffer if an unconditional dispensation were granted; that once a credible case for prejudice had been shown the tribunal would look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice; and that, accordingly, since the landlord's offer had exceeded any possible prejudice which, on such evidence as had been before the tribunal, the tenants would have suffered were an unqualified dispensation to have been granted, the tribunal should have granted a dispensation on terms that the cost of the works be reduced by the amount of the offer and that the landlord pay the tenants' reasonable costs, and dispensation would now be granted on such terms. Per Lord Neuberger of Abbotsbury PSC, Lord Clarke of Stone-cum-Ebony and Lord Sumption JJSC.

(i) Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation requirements an unconditional dispensation should normally be granted (post, para 45). (ii) Any concern that a landlord could buy its way out of having failed to comply with the consultation requirements is answered by the significant disadvantages which it would face if it fails to comply with the requirements. The landlord would have to pay its own costs of an application to the leasehold valuation tribunal for a dispensation, to pay the tenants' reasonable costs in connection of investigating and challenging that application, and to accord the tenants a reduction to compensate fully for any relevant prejudice, knowing that the tribunal would adopt a sympathetic (albeit not unrealistically sympathetic) attitude to the tenants on that issue (post, para 73).

18. Lord Neuberger giving the leading judgment stated *inter alia* the following:

*56. More detailed consideration of the circumstances in which the jurisdiction can be invoked confirms this conclusion. It is clear that a landlord may ask for a dispensation in advance. **The most obvious cases would be where it was necessary to carry out some works very urgently, or where it only became apparent that it was necessary to carry out some works while contractors were already on site carrying out other work. In such cases, it would be odd if, for instance, the LVT could not dispense with the requirements on terms which required the landlord, for instance, (i) to convene a meeting of the tenants at short notice to explain and discuss the necessary works, or (ii) to comply with stage 1 and/or stage 3, but with (for example) five days instead of 30 days for the tenants to reply.***

Determination

19. The Tribunal sympathises with the leaseholders who have effectively been foisted with a large bill for works when it appears that there has been some historic failure to address the issue of water supply. The Tribunal also has sympathy with the Applicants however. They have inherited the problem and are in effect a self - funded body - they can only spend what they collect. The fact remains that the water supply issue needed to be addressed urgently. It is simply not acceptable for any occupier to not have a functioning water supply. Mr Green gave clear and honest evidence in relation the problems and solutions. It was clear that he had tried to keep the leaseholders informed of the work. The Tribunal are satisfied that dispensation is required. There was no evidence of prejudice of the type identified in *Daejan*. The Tribunal were comforted by Mr Henderson's assurance that instalment payments would be

allowed. It is also hoped that the Applicants will continue to try to find solutions to the problems of equipment noise and aesthetics.

20. The parties are reminded that this application only relates to the issue of dispensation. Leaseholders retain a right to challenge the reasonableness and payability of costs pursuant to s 27A Landlord and Tenant Act 1985.

21. In summary the Applicants are given unconditional dispensation from the consultation requirements under s 20 Landlord and Tenant Act 1985.

Judge Shepherd

10th August 2022

Judge Shepherd 9th August 2022

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.