



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

**Case Reference** : **LON/00BK/LDC/2022/0004  
P: PAPERREMOTE**

**Property** : **Carlton Mansions, 199-217  
Randolph Avenue, London W9 1NP**

**Applicant** : **Carlton Mansions Limited**

**Representative** : **Burlington Estates (Managing  
Agents)**

**Respondents** : **The leaseholders listed in the  
spreadsheet accompanying the  
application**

**Representative** : **Unrepresented**

**Type of Application** : **Section 20ZA Landlord and Tenant  
Act 1985 - Dispensation with  
consultation requirements**

**Tribunal member(s)** : **Judge Donegan**

**Date of Paper  
Determination** : **29 March 2022**

**Date of Decision** : **29 March 2022**

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**DECISION**

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**This has been a remote determination on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper. The documents that I was referred to are in a bundle of 135 pages, the contents of which I have noted.**

## **Decision of the Tribunal**

- (a) The Tribunal grants retrospective dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') in relation to above ground drainage works to the lightwells at Carlton Mansions, 199-217 Randolph Avenue, London W9 1NP.**
- (b) No terms are imposed on the grant of dispensation.**
- (c) The applicant shall send a copy of this decision to each of the respondents, either by email, hand delivery or first-class post and shall send an email to the Tribunal by 12 April 2022, confirming the date(s) when this was done.**

## **The application**

1. The applicant seeks dispensation from the consultation requirements imposed by section 20 of the 1985 Act.
2. The application was submitted to the Tribunal on 23 December 2021. Directions were issued on 31 January 2022. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 29 March 2022.
3. The relevant legal provisions are set out in the appendix to this decision.

## **The background**

4. Carlton Mansions is a substantial property containing 93 flats. There are two blocks: one at 199 -203 Randolph Avenue and one at 205-217 Randolph Avenue. The applicant is the freeholder, and the respondents are the long leaseholders of the 93 flats. Carlton Mansions is managed by Burlington Estates ('Burlington')
5. The applicant seeks retrospective dispensation from the statutory consultation requirements for above ground drainage works to the lightwells at Carlton Court, where rainwater and foul water drain. The pipework did not comply with Building Regulations, as foul water drains had been plumbed into rainwater pipes. Further, the hoppers in the rainwater pipes were open and allowed foul water to discharge into the lightwells, causing sanitation issues.

6. Burlington served section 20 notices of intention for various works to the lightwells, including drainage works, on the leaseholders on 03 June 2021. They subsequently obtained a specification for the drainage works from Albany Chartered Surveyors ('Albany'), dated August 2021. In brief, the works involved:
  - erection of scaffolding in each lightwell,
  - removal and replacement of existing rainwater pipes and rainwater goods,
  - installation of new soil vent pipes to discharge into underground drainage system, including all connections to flats, and
  - repairing/adapting ground level gullies, including benching work.
7. Burlington attended a leaseholders' meeting on 07 October 2021 when the proposed drainage works were discussed, the leaseholders were informed of the proposed dispensation application and invited to ask questions.
8. Burlington instructed Astute Chartered Surveyors Limited ('Astute') to seek tenders for the drainage works. Astute obtained three tenders and produced a report dated November 2021. The lowest tender was from Woodgrove Contractors Limited (£179,063 excluding VAT and professional fees). The second lowest was from Springbank Contractors Limited (£184,365 excluding VAT and professional fees). They were already undertaking work at Carlton Mansions and subsequently reduced their tender to £176,865, excluding VAT and professional fees. They were instructed to undertake the drainage works and details of the tenders were supplied to the leaseholders on 11 February 2022.
9. The only issue for the Tribunal is whether 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.**

### **The grounds of the dispensation application**

10. The grounds are contained in the application form, which stated that the drainage works had commenced. Presumably, the works have now been completed.
11. The applicant seeks dispensation on the following basis:
  - (a) the drainage works were urgent, as the existing pipework did not comply with Building Regulations,

- (b) the discharge of foul water into the lightwells caused sanitation issues,
  - (c) leaseholders could not connect new bathroom waste pipes to stack pipes,
  - (d) the works were urgent as there have been several blockages to the existing pipework,
  - (e) they have obtained competitive tenders, and
  - (f) the leaseholders have been informed of the works via the notice of intention and meeting.
12. Paragraph 2 of the directions gave the respondents an opportunity to object to the dispensation application by completing and returning reply forms and serving statements, setting out their grounds of opposition. No objections have been received by the applicant.

### **The Tribunal's decision**

13. The Tribunal grants retrospective dispensation for the above ground drainage works detailed in the Albany specification dated August 2021. No terms are imposed on the grant of dispensation.

### **Reasons for the tribunal's decision**

14. The Tribunal accepts the drainage works were urgent, for the reasons advanced by the applicant. A full section 20 consultation would have taken three months or more and the works could not wait this long. In particular, the discharge of foul water into the lightwells and recurring the blockages in the pipework needed to be addressed quickly.
15. There has been partial consultation with the respondents and Burlington have kept them informed. Astute obtained three tenders for the drainage works.
16. None of the respondents has contested the application or identified any prejudice that might arise from the grant of dispensation or proposed any terms as a condition of granting dispensation.
17. Having regard to the particular facts of this case and the guidance in *Daejan Investments Limited v Benson [2013] UKSC 14*, it is reasonable to dispense with the strict consultation requirements.
18. This decision does not address the cost of the drainage works or whether the respondents are liable to contribute to the cost via their

service charges. Nothing in this decision prevents the respondents from seeking a determination of ‘payability’, pursuant to section 27A of the 1985 Act.

**Name:** Tribunal Judge Donegan      **Date:** 29 March 2022

### **Rights of appeal**

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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 the appropriate tribunal for a determination to dispense with all of 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.

### **Section 27A**

- (1) An application may be made to the appropriate 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 the appropriate 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.