

13015



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

Case reference : **LON/00BG/LDC/2018/0143**

Property : **Avebury Estate, Turin
Street/Gossett Street, London E2**

Applicant : **The Mayor and Burgesses of the
London Borough of Tower Hamlets**

Representative : **Tower Hamlets Homes represented
by Mr J Hardman – Counsel and
Mr K Schooling solicitor with
Tower Hamlets Homes**

Respondent : **The various leaseholders at the
Property**

Representative : **Dr K Smith and Ms E Begum**

Type of application : **To dispense with the requirement
to consult lessees (s20ZA Landlord
and Tenant Act 1985)**

Tribunal member : **Tribunal Judge Dutton
Mrs E Flint DMS FRICS IRRV**

Date of decision : **14th November 2018**

:

DECISION

DECISION

The Tribunal determines that dispensation should be given from the consultation requirements in respect of the Works (as set out below) to the Avebury Estate at Turin Street/Gossett Street, London E2 (the Estate) under the provisions of s20ZA of the Landlord and Tenant Act 1985 (the Act) for the reasons set out below.

The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge

"We exercise our powers under Rule 50 to correct the clerical mistake, accidental slip or omission at paragraph 12 of our Decision dated 14th November 2018. Our amendments are underlined. We have corrected our original Decision because we omitted to include the findings in respect of the application of s20C of the Act.

Signed: Tribunal Judge Dutton

Dated: 15th November 2018

Background

1. The applicant seeks dispensation under section 20ZA of the Act from the consultation requirements imposed on the landlord by section 20 of the 1985 Act¹. The application was received on 24th August 2018. A letter setting out the circumstances behind the need for the Works was sent to leaseholders on or about 4th August 2017.
2. The application follows from a letter dated 29th June 2017 from the London Fire and Emergency Planning Authority who had carried out an inspection of the roof space at McKinnon Wood House, one of 27 blocks that makes up the Avebury Estate. It seems that there had been a fire at Dickenson House in June 2017. As a result of this inspection the Authority issued a Notice of Deficiencies under the Regulatory Reform (Fire Safety) Order 2005. This required that certain works as set out in the Schedule attached to the Notice should be carried out. As a result of this Notice the Council undertook a review of the other 26 blocks on the Estate. This inspection in and around August/September 2017 revealed similar problems. The proposed works include the installation of 60 minute fire break partitions within the roof space above each block to restrict the spread of fire for up to an hour (the Works).
3. Directions were issued on 28th August 2018. The residents were sent copies of the application, directions and a questionnaire by the Applicants, who confirmed by email that this had been. It would appear that there have been 5 responses from leaseholders.

¹ See Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987) Schedule 4

4. The matter came before us hearing on 14th November 2018
5. We had available papers, which included the application, the addendum to the application, the directions, the notice from the Fire Authority and correspondence passing between the Council and leaseholders. Details of the scheme of works, the costs of Chigwell Limited, the contractor who has carried out the work and a costs analysis was also provided to us. We were also provided with the responses from Dr Smith and Ms Begum, who attended the hearing, and from Mr Duncan, Mr Hussain and Ms S and Mr P Bradley.
6. On the day of the hearing we were also provided with a helpful skeleton argument prepared by Mr Hardman, Counsel for the authority.
7. The only issue for us to consider is whether or not it is reasonable to dispense with the statutory consultation requirements in respect of the Works. This application does not concern the issue of whether any service charge costs are reasonable or payable.

THE LAW (SEE BELOW)

DECISION

8. We have considered the papers lodged. We heard from Mr Hardman, who explained the issue of prejudice and the steps taken by the Council. We noted the contents of his skeleton argument. We also heard from Dr Smith and Ms Begum. They had, to an extent, come prepared to argue the costs as would be considered under an application brought through the provisions of s27A of the Act. They appreciated the confines of our jurisdiction and were not able to produce any evidence to show that they, as individuals, or the leaseholders generally, of which there are around 120, would or had suffered prejudice as provided for in the Supreme Court decision of *Daejan v Benson*.
9. There is no doubt that the Applicant has failed to comply with the consultation process. What we need to consider, in the light of the Supreme Court Decision in *Daejan v Benson*, is the prejudice caused to any lessee. As was said in the *Daejan* case by Lord Neuberger at paragraph 46 *"I do not accept the view that a dispensation should be refused in such a case solely because the landlord seriously breached or departed from the requirements"*
10. It is clear to us from the papers that fire prevention works are required and we are satisfied that it is necessary to carry out the Works without undue delay. The addendum to the application sets out the history and the basis upon which Chigwell were asked to undertake the work. We have noted all that has been said. We have seen the cost analysis, in effect a benchmarking exercise, which supported the use of Chigwell and the costs of the works.
11. The Works clearly require prompt attention the more so as there was an earlier fire. Indeed the Fire Notice gave the Authority until 28th December

2017 to complete the works to McKinnon Wood House. We are satisfied that it is appropriate to dispense with the consultation requirements as set out in the Regulations¹ as we are satisfied that there is no prejudice caused to the leaseholders as a result of such dispensation. Our decision does not affect the right of any Respondent to challenge the costs should they so wish, it relates only to dispensation under the provisions of s20ZA of the Act.

12. The Council confirmed that it would not be seeking to recover the costs of these proceedings through the service charge regime. We therefore make an order under section 20C preventing the Council from recovering the costs of these proceedings as a service charge from the leaseholders.

Andrew Dutton

Tribunal Judge

Andrew Dutton

14th November 2018

The relevant law

Section 20 of the Act

- (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.

Consultation requirements: supplementary
Section 20ZA

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.

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.

The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

if it is an agreement of a description prescribed by the regulations, or in any circumstances so prescribed.

In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

Regulations under subsection (4) may in particular include provision requiring the landlord—

- to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,
- to obtain estimates for proposed works or agreements,
- to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,
- to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and

to give reasons in prescribed circumstances for carrying out works or entering into agreements.

Regulations under section 20 or this section—
may make provision generally or only in relation to specific cases, and
may make different provision for different purposes.

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.

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).