FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case Reference : LON/OOAG/LDC/2021/0310

Property : 38 Belsize Grove, London NW34TR

Applicant : Tant Building Management Limited

Representative : N/A

Respondents : Leaseholders of 38 Belsize Grove

Representative : N/A

Type of Application : For dispensation from the consultation requirements under section 20ZA Landlord & Tenant Act 1985

Tribunal Members : Judge Shepherd and J. Mann MCIEH

Date of Decision : 31st January 2022

Decision

The Applicant is given dispensation from the consultation requirements contained in s.20 Landlord and Tenant Act 1985 in order to carry out urgent demolition of

the wall at the front of the premises as specified in their application. The dispensation is given unconditionally.

The application

1. The applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") for dispensation from all or part of the consultation requirements imposed on them by section 20 of the 1985 Act[1].

2. The applicant is the managing agent for the premises at 38 Belsize Grove, London NW34TR ("The premises"). The premises is of Georgian origin. It consists of three flats across four floors with a small driveway at the front.

3. The applicant seeks dispensation for urgent works to remove a 2m wall between the front garden and drive way. The wall is said to be in a dangerous state. The wall is leaning and there are a number of cracks in it. A structural engineer's report carried out by B.K. Snelling, C.Eng, M.I. Struc.E of NN Engineering Consultants Limited confirms that the tree adjacent to the subject wall is likely to be under a Tree Preservation Order. The wall itself was found to be "live" to the touch and is at risk of collapse at any time. The adjacent tree with extended roots and the highly shrinkable London Clay has caused the wall to be at risk of collapse. The report recommends that the wall be carefully removed. It is not feasible to rebuild it as it would need unacceptably deep foundations. It may be that a steel railing is required. At this stage the Applicant is proposing removal of the wall only. A contractor SD Moore has quoted £2300 for removal of the wall.

4. Only one leaseholder, Dr Peter Karran has objected to the removal of the wall. He does not consider that the works to remove the wall are urgent as in his view the wall has been in the same state for some time. Dr Karran also objects to the approach of Tant Building Management stating that Tant arbitrarily decided

[1] **See Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987) Schedule 4, Part 2.**

that the wall was acutely dangerous. The Tribunal acknowledges Dr Karran's views but is bound to give greater weight to the structural engineer's report which makes it clear that the wall could collapse at any time.

5. The Applicant seeks dispensation from the consultation requirements on the basis of urgency.

6. The tribunal did not consider that an inspection of the Building was necessary, nor would it have been proportionate to the issues in dispute.

7. The only issue for the tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements of section 20 of the 1985 Act. T**his application does not concern the issue of whether any service charge costs will be reasonable or payable.**

Relevant 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

9. 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.

10. 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).

Determination

8. The Tribunal determines that an order from dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the consultation requirements in relation to the removal of the wall.

9. In making its decision the tribunal had regard to the fact that the Applicant has apparently kept the tenants informed of their intentions.

10. It is not considered that the lessees have suffered any particular prejudice as a result of the failure to follow the correct consultation procedure (see Daejan Investments Ltd v Benson [2013] UKSC 14 above.) The Tribunal accepts that the landlord's intentions to carry out the works as soon as possible are genuine in order to avoid the wall collapsing on its own.

11. Again the parties should note that this decision does not concern the issue of whether any service charge costs will be reasonable or payable. The tenants have the right to challenge such costs by way of a separate application if they so wish.

Name: Judge Shepherd **Date: 31st January 2021**

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).