



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

Case Reference : LON/00AY/LDC/2022/0037

Property : 36 Rosendale Road, West Dulwich, London,
SE21 8DX

Applicant : Southern Land Securities Ltd

Representative : Together Property Management Ltd

Respondents : Leaseholders of 36 Rosendale Road

Representative :

Type of Application : For dispensation from consultation
requirements.

Tribunal Members : **Judge Shepherd**
Chris Gowman FRICS

Date of Determination : 6th June 2022

Determination

Decision: Dispensation is granted unconditionally.

Reasons

1. In this case the Applicant seeks dispensation from the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985. The Applicant is Southern Land Securities (“The applicant”). They are the freeholders of premises at 36 Rosendale Road, West Dulwich, London, SE218DX (“The premises”). The necessary Respondents to the application are the leaseholders of the premises.
2. The premises are a converted building with four flats.
3. Dispensation is sought for carrying out works to deal with repairs to the drains at the premises. The need for the repairs was discovered by a CCTV survey carried out when a rat infestation was being dealt with. Works were carried out in 2021 over 4-5 months. No consultation was carried out. The costs of the work in total was £2200 inc VAT.
4. This determination does not concern the issue of whether any service charge costs associated with the works are reasonable and payable.

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

5. 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.

6. 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).

7. 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

8. On its face the application has merit although it's not clear why no consultation at all was carried out. Urgent works of this type are precisely the sort of work envisaged in Daejan. Accordingly, the Tribunal agrees to give dispensation. There is no evidence of any prejudice suffered by residents therefore the dispensation is given unconditionally.

Judge Shepherd

6th June 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.