



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

Case reference : **LON/00AU/LDC/2022/0168**

Property : **Knights Court, 4-6 St Johns Place,
London EC1M 4NP**

Applicant : **Knights Court Residents Property
Management Ltd**

Representative : **Eight Asset Management**

Respondent : **The Leaseholders of Flats 101 - 501
& Commercial Units 1 & 3 as per the
attached Appendix**

Representative : **None**

Type of application : **Section 20ZA Landlord and Tenant
Act 1985- To dispense with the
requirement to consult
leaseholders about the works.
Judge: N Haria**

Tribunal member(s) : **Tribunal Member: S Coughlin
MCIEH**

**Date and venue of
hearing** : **16/01/2023 decision on the papers
at Alfred Place**

Date of decision : **16 January 2023**

DECISION

Decision of the Tribunal: The Tribunal grants an order dispensing with the consultation requirements imposed under s.20 of the Landlord and Tenant Act 1985 in respect of works in respect of external works to the rear of the property to prevent water ingress into the communal staircase as identified and in accordance with the recommendations in the Defect inspection report of Project Chartered Surveyors dated 4 July 2022.

The application:

1. The applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for a dispensation of the consultation requirements imposed under s.20 of the 1985 Act and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (the "2003 Regulations") in respect of works to the Property required to prevent water ingress into the communal staircase.

Hearing:

2. The parties did not request a hearing and so the matter was dealt with on the papers.

Background

3. The Property is a mixed use residential/commercial building located on St John's Place. The main building comprises of 13 residential leasehold units over 5 floors and 2 ground floor commercial spaces and a single communal stairwell. Each floor has 3 flats and there is one penthouse apartment. The building is of a solid brick construction with a flat roof.
4. The Applicant is the Residents Management Company.
5. The Applicant claims that the works are required to prevent damage to the Property due to water ingress.

Directions:

6. The tribunal issued directions on the 6 October 2022 providing for the lessees to be notified of the application and given an opportunity to respond to the application. The tribunal received no responses from the lessees.

Inspection:

7. The Directions issued did not provide for an inspection of the property and no request for an inspection was made by either party. The tribunal did not consider an inspection to be necessary or proportionate to the issue.

The Applicant's Case:

8. The Applicant's case is set out in the application and supporting documents.
9. The Applicant has produced a copy of the leases relating to the flats and commercial units at the Property. The leases are not identical but in a similar form and provide for the Management Company and landlord to maintain and keep in a good and substantial repair and condition the Residential Communal Areas (as defined in the Lease) in the Property and for the leaseholders to contribute towards the cost of such works by way of a service charge as per the provisions of their respective leases.
10. The Applicant provided copies of two estimates with the application as follows:
 - a. LongSword Building & Maintenance Services Ltd: £8721.00 exc vat,
 - b. Oracles: £18,000 exc.vat

The Respondent's Case:

11. The Application and the Directions were sent to the Respondents. The Directions invited representations from the Respondents but no representations have been received.

The Law:

12. s. 20 of the 1985 Act provides that:

“(1) Where this section applies to any qualifying works....., 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.”*

13. The effect of s.20 of the 1985 Act is that, the relevant contributions of tenants to service charges in respect of (inter alia) "qualifying works" are limited to an amount prescribed by the 2003 Regulations unless either the relevant consultation requirements have been complied with in relation to those works or the consultation requirements have been dispensed with in relation to the works by (or on appeal from) the tribunal.
14. "Qualifying works" are defined in s.20ZA of the 1985 Act as "works on a building or any other premises", and the amount to which contributions of tenants to service charges in respect of qualifying works is limited (in the absence of compliance with the consultation requirements or dispensation

being given) is currently £250 per tenant by virtue of Regulation 6 of the 2003 Regulations.

15. s. 20ZA of the 1985 Act provides:

“(1) Where an application is made to a leasehold valuation 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.”

16. Under Section 20ZA(1) of the 1985 Act, "where an application is made to a ...tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements". The basis on which this discretion is to be exercised is not specified.

The consultation requirements for qualifying works are set out in Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003.

The Tribunal's decision:

17. The Supreme Court's decision in the case of Daejan Investments Ltd v Benson and Ors [2013] 1 W.L.R. 854 clarified the Tribunal's jurisdiction to dispense with the consultation requirements and the principles upon which that jurisdiction should be exercised.
18. The scheme of the provisions is designed to protect the interests of leaseholders, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose. The purpose of the consultation requirements is to ensure that leaseholders are protected from paying for works which are not required or inappropriate, or from paying more than would be reasonable in the circumstances.
19. The Tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any prejudice has been suffered by any leaseholder as a consequence of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.
20. The burden is on the Applicant in seeking a dispensation from the consultation requirements. However the factual burden of identifying some relevant prejudice is on the leaseholder opposing the application for dispensation. The leaseholders have an obligation to identify what prejudice they have suffered as a result of the lack of consultation.

21. The tribunal having considered the evidence is satisfied that the works are qualifying works to which the provisions of s. 20 of the 1985 Act and the 2003 Regulations apply.
22. The tribunal is satisfied that the works were of an urgent nature given that if the works were not undertaken there was a potential of further damage to the property and possibly falling masonry affecting adjacent properties.
23. The tribunal is satisfied that the works are for the benefit of and in the interests of both landlord and leaseholders in the Property. The tribunal noted that none of the leaseholders had objected to the grant of dispensation.
24. The tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to the failure to consult. The tribunal noted that the managing agent had obtained a Defect inspection report from Project Chartered Surveyors, the leaseholders have not had the chance to nominate a contractor of their choice and the works had not been put out to tender so the tribunal cannot be sure that the cost of the works are reasonable. It is noted that the Defect Inspection report records that the water ingress has over a period of time damaged the steel lintels above the infilled window opening on the 2nd and 3rd floors and the rear elevation is subject to penetrating damp. It is clear to the Tribunal, from the photographs in the Survey Report, that this water penetration had been ongoing for a significant period.
25. The tribunal has taken into consideration that the leaseholders have not had the opportunity to be consulted under the 2003 Regulations. However, the works were urgent and the Applicant has taken reasonable steps in the circumstances and in the time available, to provide the leaseholders with relevant information. In view of the now urgent nature of the works and the circumstances under which the works became necessary the tribunal does not consider that the leaseholders, in losing an opportunity to make observations and to comment on the works or to nominate a contractor, have suffered any significant relevant prejudice.
26. The tribunal having considered the evidence is satisfied that it is reasonable to dispense with the consultation requirements in this case. In the circumstances, the tribunal makes an order that the consultation requirements are dispensed in respect of the works to prevent water ingress as identified above.
27. This application relates solely to the granting of dispensation. If, when they are charged, the leaseholders wish to contest the reasonableness of the costs, or otherwise to challenge the charge, then it remains open to them to apply to the Tribunal for a determination of those issues under section 27A of the Landlord and Tenant Act 1985.

Name: Judge N Haria

Date: 16 January 2023

APPENDIX

Unit Name & Owner's Name
Flat 101 Mr A Nicholson & Ms C Irving
Flat 102 Mr D J Howard
Flat 103 Mr P Robbins
Flat 201 Mr G Harris
Flat 202 Mr C Wang
Flat 203 Mr C Vryonides & Ms C A Greenan
Flat 301 Mr J Ash
Flat 302 Mr & Mrs M Page
Flat 303 Mr & Mrs P Thorne
Flat 401 Karl Gustav Martin Eriksson & Analisa Katelyn Plehn
Flat 402 Miss Isobel V Steer
Flat 403 Mr S Bladon & Ms L Bladon
Flat 501 Lord Birt
Commercial Unit 1 Mr Steven James Cleeve
Commercial Unit 3 Warwick Classic Cars Ltd

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).