



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

Case Reference : LON/00AW/LDC/2018/0168

Property : Flats 1-24 Derwent House Stanhope
Gardens London SW7 5BJ

Applicant : Derwent House Freehold Limited

Representative : Principia Estate & Asset Management
Limited

Respondents : See attached schedule of lessees

Representative : None

Type of Application : Dispensation from consultation
requirements under section 20ZA
Landlord and Tenant Act 1985 (“the
Act”)

Tribunal Members : Mr Charles Norman FRICS
(Valuer Chairman)
Mr Michael Taylor FRICS

Date of Decision : 18 December 2018

DECISION

Decision

1. The decision of the Tribunal is that the application for dispensation from the consultation requirements (to the extent necessary) be **GRANTED**:
 - a. **unconditionally** in respect of the scaffolding and safety works at the property shown on a quotation from Brylane Construction dated 28 September 2018 (“the Brylane quotation”) (see further below).
 - b. **conditionally** in respect of like for like tile replacement subject to the conditions set out below being met (see further below).

Reasons

Background

2. Application to the Tribunal was made on 10 October 2018 for a dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) (set out in the appendix).
3. The basis of the application was expressed as follows: *“the nature of the problems relates to tiles to the external of the building (sic) underneath windows on the property. A tile has recently fallen from the 3rd floor and to ensure the safety of the residents and the wider public, we have already administered temporary measures to erect scaffolding with netting around the building to stop any more tiles from falling to the ground. Works are now being planned to inspect and repair all loose/damaged tiles to make sure no further tiles can fall.”*
4. The hearing bundle at page 42 contains a schedule of works prepared by Brylane Construction giving two alternative options for repair. These are (i) a like for like repair and (ii) replacement of the tiles by alternative installation of a rendering system.
5. Directions were issued on 17 October 2018. The directions ordered that the matter be dealt with by written representations unless any party made a request for an oral hearing, which none did. The directions required the Applicant to give notice of the application to all lessees, evidence of which was provided to the Tribunal. In addition, the respondents were invited to respond to the application.
6. The Tribunal did not consider that an inspection of the property was necessary.

The Property

7. The property is described as a block of 24 purpose-built flats.

The Respondents' leases

8. A sample lease of Flat 1 was supplied, dated 15 July 2016 by which a term of 999 years was granted by the Applicant. Clause 4 obliges the tenant to pay a maintenance charge based on a proportionate part of the lessors' expenditure. By Clause 5.2 the landlord covenants to keep the main structure of the building including exterior walls in good and substantial repair and condition.

The Application

9. The Applicant had not fully complied with the directions in that it did not provide a statement setting out the full grounds for the application including what consultation may have taken place and why it is considered inappropriate to go through the full consultation procedure.
10. The position was unclear as to precisely what dispensation was sought as two alternative construction methodologies were being considered. There were multiple quotations.
11. In addition, it was unclear what (if any) consultation notices have been served as none are included in the bundle.
12. However, there was evidence that tiles have fallen from the building and that this required urgent scaffolding and related safety measures.
13. The Tribunal was concerned by the lack of clarity in the application and the absence of a clear statement of case. The information about the property was also very limited and no photographs or any other relevant factual evidence been supplied. The grant of dispensation from the consultation requirements under section 20 of the Act is a departure from compliance with the normal statutory provisions involving the exercise of a discretion by the Tribunal. The burden is on an Applicant to demonstrate that it would be reasonable on the facts of each case.
14. Consequently, the Tribunal did not consider that it was able to determine the application based on the Applicant's case as initially provided. The Tribunal therefore directed that further information, including a statement of case, be provided, which was received on 7 December 2018.
15. The gist of the statement of case was as follows. The exterior (hanging) tiles were in a dangerous condition, following report of a fall on 6 July 2018; a surveyor and contractor met on site on 18 July 2018 to consider the best course of action. On 10 September 2018 notices were circulated to leaseholders. On 19 September 2018 a surveyor advised that there was a risk of further tile falls unless they were each either secured in place separately or covered. On 20 September 2018 notice of application to the Tribunal was made. On 28 September 2018 Brylane Construction produced quotes for two

alternative solutions: replacing the existing tiles with aluminium (option 1) or installing “K Rendering” a proprietary rendering system (Option 2).

16. On 26 October 2018 a tender report was received from JHM Contracts Ltd and on 2 November a quote was received.
17. On 6 December 2018 the Applicants informed the Tribunal that neither the K Rendering nor rockpanelling solutions have yet been accepted in planning terms by the Royal Borough of Kensington and Chelsea. An email was included from a Senior Planning Officer of the Council dated 30 November 2018 which stated that the rockpanelling proposed was unacceptable owing to “durability and quality” and stated, “I would encourage you to look at alternatives”. The Officer went on to say “we will determine the aluminium panels application rather than withdrawn (sic) it, as you request”.
18. The Applicant stated *“the council’s advice is to pursue like for like replacement, retaining the tiles design which is currently in place. For this reason, we are now obtaining alternative quotes and will update leaseholders as soon as a determination has been confirmed from the council. To date no estimates have been received for a like for like replacement... [the Applicants] do not expect the costs to exceed that of ...Option 1.”*

The Respondents’ Case

19. Eight replies to the standard questionnaire were received all in favour of the application. The latest is dated 2 November 2018.

The Law

20. Section 20ZA is set out in the appendix to this decision. The Tribunal has discretion to grant dispensation when it considers it reasonable to do so. In addition, the Supreme Court Judgment in *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 empowers the Tribunal to grant dispensation on terms or subject to conditions.

Findings

21. The Tribunal accepts that the scaffolding and safety work was and is urgently required. It concluded that the appropriate outcome was to grant dispensation in relation to those matters unconditionally. This relates to items 1.01-2.01 inclusive and pro rata elements of items 4.01, 4.02 and 4.03 on the Brylane quotation.
22. As to the proposed like for like replacement tiling, the Tribunal remains concerned that no final agreed proposal acceptable to the Council has yet been

the subject of a quotation. However, as the Applicant is jointly owned by the lessees from whom no objection has been raised to the application to date and in all the circumstances the Tribunal considers it reasonable to grant dispensation subject to the following conditions:

- i. The quotation(s) for the like for like tile replacement shall be sent to each Respondent and placed in prominent areas of each entrance to the property. The Applicant shall invite written observations from the Respondents for a period of 14 days thereafter and shall have regard to any such observations.
 - ii. The Applicant shall inform the lessees as to the identity of the successful contractor and the reasons for its selection.
 - iii. The quotation does not exceed by more than 5% the relevant elements of the Brylane quotation option 1: further preliminaries 1.01-1.08 (if necessary), items 3.00-3.04 inclusive and pro rata elements of 4.00, 4.01 and 4.02.
 - iv. That the Council's planning officer confirms in writing¹ to the Applicant that the proposed like for like replacement is acceptable in planning terms and will be subject to a positive recommendation for planning permission or that such permission will be granted by a Chief Planning Officer or other Senior Officer under delegated powers, but no such work shall commence before planning permission has been granted.
 - v. That the contract be placed no later than 31 March 2019.
2. The Tribunal considers that these conditions are necessary to prevent the Respondents suffering possible prejudice as a result of the dispensation.
 3. This application does not concern the issue of whether any service charge costs will be reasonable or payable. The leaseholders will continue to enjoy the protection of section 27A of the Act.

C Norman FRICS
Valuer Chairman

18 December 2018

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

¹ Writing includes emails

- If a party wishes to appeal against 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.

Appendix

“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.

if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

the consultation requirements

(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.

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

Schedule of lessees

Ms Jasmine Kenawy, flat 1

Mr Mamdooh Alaali, flat 2

Ronald Shanson Jansen & Isidra Shanson, flat 3

Mr K Yan & Ms W Zhang, flat 4

Mehdi Raouf, flat 5

Ajay Puri, flat 6

Ms Rita Chalfoun, flat 7

Rami William Karam, flat 8

Ms L Sloan, flat 9

Amal Boueri Nabhan & Elie Nabhan, flat 10

Laurence Cabache Femi Cabache and Alaine Cabache, flat 11

Mrs Teresa Chalfoun, flat 12

Mrs Mohini Punwani & Mrs Anita Punwani, flat 13

Ms Dina Karam, flat 14

Rami William Karam, flat 15

Evgeniya Yatsenko, flat 16

Mrs A Orsini, flat 17

Debbie E Clarke & Paul A Stoker, flat 18

Qiang Huang, flat 19

Rami William Karam, flat 20

Ms Dina Karam, flat 21

Chanchakorn & Pataris Chaipromprasith, flat 22

Dr S Kalantari, Miss Z Miss M & Miss Amini, flat 23

Derwent Apartments Ltd, flat 24