



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

Case Reference : **LON/00BK/LDC/2020/0114
CVPREMOTE**

Property : **St Augustine's Mansions, Bloomburg
Street, London SW1V 2RG**

Applicant : **St Augustine's Mansions Limited**

Representatives : **Dr Laurie Koehler Director**

Respondents : **The several leaseholders of flats in
St Augustine's Mansions, Bloomburg
Street, London SW1V 2RG
listed in the application**

Objecting tenant : **Yuri Babin (Flat 7)**

Type of Application : **Application for the dispensation of
consultation requirements pursuant to
S. 20ZA of the Landlord and Tenant Act
1985**

Tribunal Members : **Judge Professor Robert M Abbey
Mr Duncan Jagger MRICS**

**Venue of
Determination** : **10 Alfred Place, London WC1E 7LR by
Video conference**

**Date of Determination
and Decision** : **30th September 2020**

DECISION

Decisions of the Tribunal

- (1) The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act).
- (2) The reasons for the Tribunal's decision are set out below.

The background to the application

1. The property, **St Augustine's Mansions, Bloomburg Street, London SW1V 2RG**, comprises eighteen self contained flat dwellings being a five-storey high block.
2. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.
3. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the Ministry of Justice Cloud Video Platform with all participants joining from outside the court. A face to face hearing was not held because it was not possible due to the Covid -19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions. The bundle was supplemented by some additional documents submitted in the week prior to the hearing.
4. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act, (see the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987), Schedule 4.) The request for dispensation concerns urgent remedial works to maintain scaffolding and effective emergency roof repairs. The application is said to be urgent, as the works were necessary to stop water ingress into a fourth floor flat. The water ingress was making the flat damp and has led to mould and staining on the walls and ceiling of the flat affected.
5. Section 20ZA relates to consultation requirements and provides as follows:

"(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.

*(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.*

....

*(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. At the time of a hearing for Directions on 4 August 2020 made by Judge N. Carr the Directions required tenants who opposed the application to make their objections known on the reply form produced with the Directions. One objection form was received from the tenant of flat 7 and this was then followed by detailed written representations from the objecting tenant.
7. In essence, the works mentioned above are required to ensure that there is a stop to water ingress into the affected fourth floor flat caused by a defect on the roof structures and blockage in the drainage system. The water ingress was making the affected flat damp and has led to mould and staining on the walls and ceiling of the flat affected. Dispensation was thought necessary to speed up the remedial works and to save costs.

The decision

8. By Directions of the tribunal dated 4th August 2020 it was decided that the application be determined without a hearing or by way of a video hearing if an objection was made. There being an objection the hearing was held by video with the parties attending as listed previously. Also attending were two

witnesses from the Management Company that has been appointed to manage this block to assist the tribunal with further details on the decision-making process and the details of the remedial works required.

9. The tribunal had before it a substantial bundle of documents prepared by the applicant that contained the application, grounds for making the application including full details of the necessary remedial work necessary to make the roof structure water-tight and to correct the fault causing the water ingress together with copy correspondence including the single copy objection form, a specimen copy lease and copy Tribunal Directions. Further details of the objection were also in the bundle along with a late submission from the objecting tenant that the Tribunal allowed as late evidence.

The issues

10. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether or not service charges will be reasonable or payable.**
11. Having read the evidence and submissions from the Applicant and having considered all of the copy deeds, reports, documents and grounds for making the application provided by the applicant, and the one detailed objection from the objecting tenant the Tribunal determines the dispensation issues as follows.
12. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
13. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by such an application as is this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.
14. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14, by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.
15. The Supreme Court came to the following conclusions:
 - a. The correct legal test on an application to the Tribunal for dispensation is:

“Would the flat owners suffer any relevant prejudice, and if so, what

relevant prejudice, as a result of the landlord's failure to comply with the requirements?"

- b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.
 - c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord's failure to comply.
 - d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.
 - e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
 - f. The onus is on the leaseholders to establish:
 - i. what steps they would have taken had the breach not happened and
 - ii. in what way their rights under (b) above have been prejudiced as a consequence.
16. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the lessor/applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above. It should also be remembered that only one leaseholder has indicated through a written objection that he actually opposes the application.
17. The tribunal is of the view that, taking into account the representations made by the objecting tenant and in the absence of any significant written representations from any of the remaining leaseholders, it could not find prejudice to any of the tenants of the properties by the granting of dispensation relating to the roof repair works set out in detail in the documentation in the trial bundle submitted in support of the application.
18. The Tribunal was mindful of the fact that the works were undertaken by the applicant supported by diligent managing agents and with proper estimates and works specifications and that therefore dispensation is wholly appropriate.
19. The applicant believes that roof repair works were vital given the nature of the problems reported. The applicant also says that in effect the tenants of the properties have not suffered any prejudice by the failure to consult. On the evidence before it the Tribunal agrees with this conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the

application. It must be the case that the necessary roof repair works should be carried out as a matter of urgency to ensure the safety and integrity of the building and the well-being of the leaseholder in the affected flat and hence the decision of the Tribunal.

20. Rights of appeal made available to parties to this dispute are set out in an Annex to this decision.
21. The applicant shall be responsible for formally serving a copy of the tribunal's decision on all leaseholders. Furthermore, the applicant shall place a copy of the tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. Copies must also be placed in a prominent place in the common parts of the block. In this way, leaseholders who have not returned the reply form may view the tribunal's eventual decision on dispensation and their appeal rights.

Name: Judge Professor Robert
M. Abbey

Date: 30th September 2020

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
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 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.