



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

Case reference : **MAN/00BY/LDC/2021/0035, 0036,
0037, 0038, 0039 & 0040**

Properties : **York Street, Henry Street & Argyle
Street, Liverpool**

Applicant : **Andrew Louis Estate Agents Limited**

Representative : **Sarah Mansfield, Cullimore Dutton,
Solicitors**

Respondent : **Various Residential Long Leaseholders**

Type of application : **Dispensation with statutory
consultation requirements under
s.20ZA Landlord and Tenant Act 1985**

Tribunal member(s) : **Tribunal Judge Leslie Brown, Tribunal
Judge James-Stadden, Tribunal
Member Simon Wanderer**

Date of decision : **01 July 2022**

Date of Determination : **24 August 2022**

DECISION

Decisions of the tribunal

- (1) Dispensation is granted pursuant to section 20ZA of the Landlord and Tenant Act 1985.

The application

1. The applications are brought by Andrew Louis Estate Agents Limited, the managing agents for Wallace Estates Limited, the freeholder and landlord, of flats at:
 - a. Block 3, 29, Argyle Street, Liverpool;
 - b. 12, York Street, Liverpool;
 - c. 16, Henry Street, Liverpool;
 - d. 18, Henry Street, Liverpool;
 - e. 23-25, Argyle Street, Liverpool; and
 - f. Block 3, 27, Argyle Street, Liverpool.
2. The respondents are the leaseholders of the residential flats in these properties, who were identified in lists submitted to the tribunal by the applicant with the applications together with a specimen lease, the contents of which the applicant confirmed are identical for all of the properties concerned.
3. The applicant seeks dispensation pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) in respect of consultation requirements in relation to certain qualifying works, within the meaning of the Act (“the Applications”). The Applications are dated 14 July 2021.
4. The qualifying works comprise instructing a specialist consultant to carry out a full EWS1 survey and to produce a report into the construction of the cladding, the compartmentalisation, partition and construction of fire breaks, the makeup of insulation and a consideration of the balconies and external fascias of the buildings to assess whether they were constructed in compliance with Building Regulations.
5. The urgency in the works arises from the service of an enforcement notice by Merseyside Fire and Rescue Service, a statutory authority, requiring that the works be done in order to assess the safety of the properties and, in particular, the level of exposure of the leaseholders and residents to the risk of fire.
6. The only issue is whether it is reasonable to dispense with the statutory consultation requirements.

Paper Determination

7. Directions were issued by Judge Bennett on 28th March 2022.

8. Those directions provided, amongst other things, that the applicant must within 28 days of the date of the directions, send to the Tribunal, with a copy to each respondent, a bundle of documents consisting of:
 - a. the directions;
 - b. the tribunal application form;
 - c. a statement of case explaining why the application had been made;
 - d. any correspondence sent to the leaseholders in relation to the works
 - e. detailed reasons for the urgency of the works and the consequences upon the leaseholders of any delay
 - f. any quotes or estimates for the proposed works and relevant reports; and
 - g. copies of any other documents the applicant sought to rely on in evidence.
9. The directions further provided that the applicant must confirm to the tribunal that this had been done. By email dated 13 May 2022, the applicant provided the tribunal with a sample email to leaseholders dated 22 April 2022 to this effect.
10. The directions also provided that any leaseholder who opposed the Applications must within 21 days of receipt of the documents referred to at paragraph 8 above complete and return the reply form attached to the directions and send it to the applicant and tribunal together with a statement in response to the Applications and any documents and witness statements which they sought to rely on in evidence.
11. The applicant received 3 responses from leaseholders, to which they replied. The tribunal has been provided with copies of those responses and the applicant's replies to them.
12. No further responses were received from those leaseholders or any of the other leaseholders and no objections to the Applications were submitted to the tribunal by any respondent, none of whom have taken any part in this application.
13. The directions provided that the tribunal considered the matter to be one that could be resolved by way of submission of written evidence and stated that, if any party wished to make representations at an oral hearing, that party should inform the tribunal office of this in writing within 42 days from the date of the directions.
14. No such request has been made and the Applications have thus been determined by the tribunal on the papers submitted by the applicant.
15. The directions expressly state that the Applications concern only whether or not it is reasonable to dispense with the consultation requirements and does not concern the issue of whether any service charge costs resulting from any such works are reasonable or payable and that it will be open to the leaseholders to challenge any such costs charged by the applicant.

The Law

16. Section 20ZA(1) of the Act provides that:

‘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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.’

17. The Supreme Court in the case of *Daejan Investments v Benson and others* [2013] UKSC 14 set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of sections 19 to 20ZA of the act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate, went on to state:

‘it seems to me that the issue on which the [tribunal] should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements’.

Findings of Fact

18. The tribunal is satisfied that the Applications were properly brought and that they are in proper form.
19. The applicant seeks dispensation from the consultation requirements as the works, which are qualifying works, are required urgently in order to comply with an enforcement notice issued by a statutory body which requires that a full EWS1 survey be carried out and a report prepared following that survey. Those works are necessary and urgent, as the safety of the properties must be assessed as, too, must the level of exposure of the leaseholders and residents to the risk of fire.
20. The applicant states that the quote that it has received from the intended consultant is not only £3696 cheaper than the next best quote obtained, but also represents a saving insofar as it is a previously agreed price which the intended consultant has agreed to honour, thereby avoiding the need for a fresh tender to be submitted.
21. The applicant has submitted evidence that the leaseholders were provided with a copy of the tribunal’s directions of 28 March 2022, to which was attached a reply form. There is no evidence that any objections to the Applications were submitted.
22. The tribunal is satisfied on the basis of the Applications and other documents before it, and in the absence of any objections from the leaseholders, that the qualifying works were necessary and urgent in nature, having regard to the risks if they were not urgently undertaken.

23. In the absence of any submissions from any respondent objecting to the works or to the Applications, or contending that granting the Applications would result in prejudice, the tribunal finds no evidence that the respondents would suffer prejudice in the event that the Applications for dispensation from the consultation requirements were granted.

Determination

24. In the circumstances set out above, the tribunal considers it reasonable to dispense with the consultation requirements. Dispensation is granted pursuant to section 20ZA of the Landlord and Tenant Act 1985.
25. This decision does not affect the tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act as to the reasonableness and standard of the work and/or whether any service charge costs are reasonable and payable.

Tribunal Judge Leslie Brown
01 July 2022

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).