



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

Case Reference : CHI/45UE/LDC/2017/0022

Property : 5/7, 9, 11, 13, 15, 17 & 19 Broadwalk,
Crawley, West Sussex RH10 1HJ

Applicant : Sterling Alliance Ltd.

Represented by : Pearl & Coutts

Respondents : The Long Lessees

Type of Application : Dispensation from the consultation
requirements under Section 20ZA of
the Landlord and Tenant Act 1985 (as
amended)

**Tribunal Member
(Surveyor/Chairman)** : Mr. R. A. Wilkey FRICS

Date of Consideration : Tuesday 6th June 2017
Paper determination

Date of Decision : Tuesday 6th June 2017

DECISION

DECISION IN SUMMARY

1. The Tribunal determines to dispense with the consultation requirements contained in Sch.4 Part 2 paragraphs 8-13 of the Service Charges (Consultation Requirements) (England) Regulations 2003 and the Section 20 procedure in relation to the qualifying works to remove and replace external soffit boards (including scaffolding).

INTRODUCTION

2. This is an application by the Freeholder of the block, in accordance with S.20ZA of the Landlord & Tenant Act 1985, for dispensation of all or any of the consultation requirements in respect of qualifying works.
3. Directions for the conduct of the matter were issued by the Tribunal on 3rd April 2017.

THE LAW

4. The statutory provisions primarily relevant to this application are to be found in S.20ZA of the Landlord & Tenant Act 1985 as amended (the Act). The Tribunal has of course had regard to the whole of the relevant sections of the Act and the appropriate regulations or statutory instruments when making its decision, but here sets out a sufficient extract or summary from each to assist the parties in reading this decision.
5. S.20 of the Act, and regulations made thereunder, provides that where there are qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a First Tier Tribunal. In the absence of any required consultation, the limit on recovery is £250 per lessee in respect of qualifying works.
6. The definitions of the various terms used within S.20 e.g. consultation reports, qualifying works etc., are set out in that Section and in S. 20ZA.
7. In order for the specified consultation requirements to be necessary, the relevant costs of the qualifying works have to exceed an

appropriate amount which is set by Regulation and at the date of the application is £250 per lessee.

8. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, SI2003/1987. These requirements include amongst other things a formal notice procedure, obtaining estimates and provisions whereby a lessee may make comments about the proposed work and nominate a contractor.
9. S.20ZA provides that a First Tier Tribunal may dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to dispense with them. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied (subsection (1)).
10. The Supreme Court has given guidance on how the Tribunal should approach the exercise of its discretion to grant dispensation: *Daejan Investments Ltd. v Benson et al* [2013] UKSC 14. The Tribunal should focus on the extent, if any, to which the lessee has been prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the lessor to comply with the regulations. No distinction should be drawn between serious or minor failings save in relation to the prejudice caused. Dispensation may be granted on terms. Lessees must show a credible case on prejudice, and what they would have said if the consultation requirements had been met, but their arguments will be viewed sympathetically, and once a credible case for prejudice is shown, it will be for the Lessor to rebut it.

EXTENT OF PROPOSED WORK

11. The Application states “Soffits that run across the front and rear of the building have become broken – upon inspection found to contain asbestos, this is breaking into a public shopping area. The local authority have granted emergency consent to erect scaffolding to carry out testing and temporary netting installation”

DESCRIPTION AND CIRCUMSTANCES

12. The building is arranged on ground, first and second floors and comprises 8 commercial units with eight leasehold flats above.
13. Over the weekend of 11/12 March 2017, high winds caused one of the soffit boards that run under the roof of the building to come away and break on the pedestrianised shopping area below.
14. The site contractor advised that the soffits may contain asbestos. Accordingly, an independent contractor was instructed to examine the soffits.
15. In view of the damage to the soffits, instructions were given for the area to be protected and scaffolding/netting erected immediately to protect people shopping in the pedestrianised shopping area
16. Once the scaffolding was in place, a specialist asbestos removal firm was instructed to take samples and test the soffit boards. On 23rd March 2017, it was confirmed that the soffits are asbestos cement containing Chrysotile and Crocidolite asbestos
17. Arrangements were then made for scaffolding to be erected at the rear of the property where soffit boards are also located above the residential leasehold flats.
18. Instructions were given to A&E Asbestos to commence works to remove the soffits at the front and rear. The work began on 2nd May and was completed by 7th May 2017.
19. Following removal of the soffits, D. Ward have been instructed to renew the soffits. This work is currently in progress with completion expected by 26th May 2017.
20. In the meantime, the Freeholder will be continuing with the S. 20 Consultation and will be issuing the Part 2 Notices.

THE LEASES

21. The tribunal has been provided with a copy of the lease of 9a Broadwalk. It is assumed that leases of all the flats are in similar format so far as is relevant to this application.
22. Clause 3(3) states:
1. "Provided that and so long as the lessee shall perform and observe his obligations under this lease and shall make all payments hereunder required to be made by him the lessor covenants that he shall:
 - (i) in good and substantial repair and condition maintain redecorate and renew amend clean repoint repair grain varnish whiten and colour:
 - (a) the structure of the Reserved Property and in particular but without prejudice to the generality thereof the roof foundations chimney stacks gutters and rainwater and soil pipes thereof (including the roof timbers thereof)
23. The fourth schedule sets out the expenses and outgoings and other heads of expenditure in respect of which the lessee is to pay a proportionate part by way of maintenance charge. Item 1 states as follows:
- "The expense of repairing maintaining redecorating and renewing and amending cleaning repointing painting graining varnishing whitening or colouring the Block and the Reserved Property and all parts thereof and all the appurtenances apparatus and other things belonging thereto"
24. The Tribunal has not interpreted the lease to determine whether or in what proportion a service charge may be levied on the tenant.

CONSIDERATION

25. Item 6 of the Directions issued by the Tribunal on 3rd April 2017 states that the Application is to be determined on the basis of written representations unless any party makes a request for an oral hearing within 28 days of receipt of the Directions. No such request has been made.

PRELIMINARY MATTERS

26. The Tribunal had received copies of the following documents:
- The Application for dispensation
 - Directions by the Tribunal issued on 3 April 2017
 - The lease in respect of 9a Broadwalk
 - Applicant's Statement of Case dated 15th May 2017
 - Office Copy Entries for Freehold Title WSX255458
 - Copies of letters dated 4th April 2017 to all leaseholders of residential units advising of the intention to proceed with the work in order to comply with the requirements of Section 20 of the Landlord and Tenant Act 1985 (as amended)
 - Asbestos Test Certificate and quotation for asbestos removal both dated 23 March 2017 and prepared by ams management (GB) LLP
 - Quotations provided by D. Ward and Associated Contracts (UK) Ltd for replacement of soffits.
 - Various black and white photographs of the relevant parts of the property

CONSIDERATION

27. The Tribunal confirms that the Application under consideration is solely to dispense with the consultation requirements that would otherwise exist to carry out the procedures in accordance with S.20 of the Act. It does not prevent an application being made by the landlord or any of the tenants under S.27A of the Act to deal with the liability to pay the resultant service charges. It simply removes the cap on the

recoverable service charges that S.20 would otherwise have placed upon them.

THE APPLICANT'S VIEWPOINT

28. The circumstances that lead to this application are stated in the Applicant's statement of case and are summarised under items 12 – 20 above.
29. The applicant has proceeded in a diligent manner to ensure that the area beneath the defective soffits is safe, establish that the soffits contain asbestos material and arrange for replacement.
30. The grounds for seeking dispensation contained in the application include the following:
 1. The removal and replacement of external soffit boards (including scaffolding) as the current ones have broken and contain asbestos as per report. These over-hang the flat windows and could potentially allow spores into bedrooms/bathrooms etc.
 2. All leaseholders have been advised to keep windows closed. We have advised them of the urgency to remove such asbestos and also an estimate of costs involved.

THE LEASEHOLDERS' VIEWPOINT

31. The Leaseholders are aware of this application and the directions confirm that each was issued with a form to complete advising if they oppose the application. No objections have been received.

THE DECISION

32. The decision is made on the basis of a paper determination and the Tribunal has carefully considered the documents supplied.
33. As indicated earlier, the primary consideration for the Tribunal is whether or not the Lessees will suffer prejudice if dispensation is granted.

34. The stage 1 Notice under S. 20 Landlord and Tenant Act 1985 (as amended) was sent to the leaseholders on 4th April 2017. Two quotations have been obtained for renewal of the soffits and work is in progress. None of the leaseholders have made any comments or objections to the proposals.
35. The tribunal is satisfied that sufficient time has been given to the leaseholders to make their views known and is able to infer from the fact that no responses have been made that the leaseholders support the application.
36. The nature and basis of the proposed works has been established and, as indicated earlier, the grant of dispensation simply removes the cap on the recoverable service charges that S.20 would otherwise have placed upon them. The landlord or the tenant can make a subsequent application under S.27A of the Act to deal with the liability to pay the resultant service charges
37. The Tribunal has carefully considered all the information available to it and has concluded that there is no evidence that the Respondent may be prejudiced by the lack of consultation.
38. Taking all the circumstance into account and for the reasons stated above, the Tribunal is satisfied that it is reasonable in all the circumstances for it to grant dispensation from the requirements of Section 20(1) of the Act in respect of the proposed works

Dated: Tuesday 6th June 2017

Roger A. Wilkey FRICS (Surveyor/Chairman)

Appeals

38. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
39. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
40. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend the time limit, or not to allow the application for permission to appeal to proceed.
41. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.
42. If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.