



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

Case Reference : **LON/00AW/LDC/2017/0113**

Property : **Stavordale Lodge 10-12, Melbury Road
London W14 8LW**

Applicant : **Stavordale Lodge Limited
c/o Hillgate Management,**

Representative : **None**

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)**

Date of Decision : **24 October 2017**

DECISION

Decision

1. The decision of the Tribunal is that the application for dispensation be **GRANTED** subject to the following conditions:
 - i. Within seven days the applicant shall convene a meeting at which all lessees shall be invited to discuss the matter.
 - ii. Within 14 days, Notice of Intention to do the works must be sent to each lessee and displayed in the common parts describing the works and the reason for the works and giving the lessees 14 days in which to make observations or nominate their own contractors.
 - iii. The applicant must seek at least two alternative quotes for the whole of the work (or individual elements of the work such as roofing or kitchen fitting) including from any contractor nominated by the lessees.
 - iv. Within 42 days the applicant must issue a statement to the lessees and displayed in the common parts with all the estimates, lessees' observations and the applicant's response(s).
 - v. Paragraph 13 of the Service Charges (Consultation Requirements) (England) Regulations ("the Regulations") shall be complied with.

Reasons

Background

2. Application to the Tribunal was made on 20 September 2017 for a dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") (set out in the appendix). Directions were issued on 28 September 2017 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 publicity to be given to the application in the block, evidence of which was provided to the tribunal. In addition, the respondents were invited to respond to the application. The Tribunal did not inspect the property.

The Property

3. The property is described as a purpose-built block of ten flats with underground parking and attached porters' lodge. The applicant described the location as very affluent.

The Respondents' leases

4. A sample lease of Flat 9 was supplied, dated 26 November 1998 by which a term of 999 years was granted by the applicant. Clause 4.6 obliges the

landlord to carry out repair works in the Fourth Schedule. This includes structural repair (Para 11.1(a) and repairs /re-decoration of staff accommodation (Para 11.1(i)). By clause 3.24 the lessee is obliged to pay its percentage contribution to the service charge. It therefore appeared to the Tribunal that the works for which dispensation are sought fall within the service charge recovery provisions in the lease, although it is unnecessary for the Tribunal to make a formal finding in this application and it does not do so.

The Applicant's Case and Nature of the Works

5. The basis of the application was set out as follows and after explaining that the previous resident porter has been dismissed: "We are the new managing agents (approx. 3-4 months in) and access was not granted to the porters flat in our short time as agents but once access was granted it was seen that the flat has an extensive leak from the flat roof, condensation needs to be addressed, the kitchen is in a poor state, the décor repainted, it is in essence non habitable. The road ... has been subject to aggravated burglaries in the past, so our belief it is imperative for a new porter to be appointed ASAP but to live in a habitable abode." Elsewhere on the application the works were described as "replacement of flat roof, replacement of kitchen, painting of porters flat, various minor maintenance works to the porters flat."
6. The applicants stated that they are interviewing for a replacement porter and a suitable replacement has been found but the lodge is not in a habitable state.
7. The applicants have not yet commenced consultation requirements under the Regulations.

The Respondents' Case

8. No replies were received from the respondents.

The Law

9. 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

10. The Tribunal is concerned that very little detail of the proposed works or their extent has been provided. It also notes that no estimated costs of any kind have been provided. The information about the property is also very limited and no photographs or any other relevant factual evidence has 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.

11. Further, no evidence has been provided to show why the porters lodge would be uninhabitable during redecoration/kitchen repair work and why a temporary roofing repair would be impracticable whilst the consultation procedure is undertaken. The Tribunal notes that until recently the lodge was occupied by the previous porter which suggests that it is habitable, albeit requiring repairs.
12. The Tribunal also notes that little or no attempt at partial consultation has been undertaken. There was also no indication of support for the application from any of the respondents.
13. For each of the above reasons the Tribunal gave serious consideration to refusing the application.
14. However, it accepts that there is a genuine security concern if the porter is non-resident and concluded that the appropriate outcome was to grant dispensation but subject to the conditions set out above.
15. 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

24 October 2017

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.
- 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

Section 20ZA Landlord and Tenant Act 1985

(1) Where an application is made to [the appropriate 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.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

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

(b) in any circumstances so prescribed.

(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)Regulations under section 20 or this section—

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

(b)may make different provision for different purposes.

(7)Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.