

12951



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

Case Reference : **MAN/00DA/LDC/2018/0035**

Property : **St Ann's Tower, Kirkstall Lane,
Headingley, Leeds LS6 3DS**

Applicant : **St Ann's Tower Management Ltd**
Representative : **Watson**

Respondents : **See Annex**

Type of Application : **S20ZA Landlord and Tenant Act 1985**

Tribunal Members : **Mr J Murray LLB
Ms A Ramshaw**

Date of Determination : **08 January 2019**

Date of Decision : **12 February 2019**

DECISION

© CROWN COPYRIGHT 2019

DETERMINATION

The Tribunal determines that dispensation from consultation for the works as detailed in the application be granted pursuant to s20ZA Landlord and Tenant Act 1985.

INTRODUCTION

1. An application was made by St Ann's Tower Management Limited for dispensation of the consultation requirements of s20 of the Landlord and Tenant Act 1985 in relation to the installation of a UPVC roof lantern with polycarbonate roofing panels.

THE PROCEEDINGS

2. Directions were made by a Procedural Judge on the 1 November 2018 for the matter to be dealt with as a paper determination.
3. The Applicant was required to file and serve by 15 November 2018 a bundle of documents with (amongst other items) a statement of case, and copies of any correspondence sent to the leaseholders in relation to the works, including an explanation and any documents confirming the urgency of the works, any quotes or estimates for the works, and copies of any other documents relied upon in evidence.
4. Any Respondent was permitted within fourteen days of receipt of the above to send to the Applicant's representative any statement made in response to the Applicant's case, including documents.
5. The Tribunal would determine the matter on the papers received unless any of the parties requested a hearing.

THE APPLICATION

6. The Application (dated 15 October 2018) sought dispensation from the statutory consultation process.
7. The Application outlined that the Management Company intended to carry out works to the roof, by fitting a UPVC roof lantern, with polycarbonate roof panels. The works were to be ordered on the 15 October 2018 to be started three to four weeks after that date. Estimated costs were £13,400 in excess of the statutory limit of £250 per leaseholder. Correspondence sent to leaseholders suggested the works would take around two months.
8. The Application stated that the property comprises a building converted to residential apartments in or around 2002.

THE LEASE

9. The Applicant provided a sample lease for Flat 4A St Anns Tower, being a lease granted in 2002 for a term of 125 years, between the Freeholder, the Applicant management company and the lessee. At 1.2.2 the lease stated that it was the intention that all leases for the Building would be granted on an identical basis.
10. The Applicant Management Company is party to the lease to undertake the management obligations under the lease, with the intention being declared that the Landlord would convey the freehold to the Applicant, and leaseholders would become a member of the Applicant company.
11. The Applicant covenanted at Clause 5.2 to keep the Common Parts and the Service Conduits in the building in repair and rebuild or replace any parts that require to be rebuilt or replaced.
12. The Respondents covenanted in clause 2 to pay to the Applicant the Service Charge in relation to the performance of the obligations of the Applicant in Clause 6.6

THE LEGISLATION

13. The relevant legislation is contained in s20ZA Landlord and Tenant Act 1985 which reads as follows
s20 ZA Consultation requirements: supplementary
 - (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
14. The Applicant in their statement of case said they had been unable to obtain more than one quote for the works. The works were to replace the roof lantern which was currently leaking and would affect the top floor apartment and other parts of the building if not replaced as soon as possible. An invitation to tender had been sent to three contractors on the 14 June, and only one quote was received, with others declining to quote. The Applicant did not want the consultation process to be further delayed.
15. A sample copy letter sent under Stage 1 of the consultation process was provided, with a second letter indicating leaseholders had been told about the estimated costs.

OBSERVATIONS FROM THE RESPONDENTS

16. The Tribunal did not receive any observations from any of the Respondents.

THE DETERMINATION

17. The Tribunal has jurisdiction to dispense with consultation before works have been carried out, when they have been commenced, and when they have been completed
18. This was confirmed by HHJ Huskinson in the Upper Tribunal who considered the jurisdiction for prospective dispensation under s20ZA in the case of Auger v Camden LBC in March 2008. The Upper Tribunal confirmed that the Tribunal has broad judgment akin to a discretion in such cases. The dispensation should not however be vague and open ended. The exercise of discretion to grant dispensation requires the clearest of reasons explaining its exercise.
19. Dispensation was considered in depth by the Supreme Court in Daejan v Benson [2013] UKSC14 which concerned a retrospective application for dispensation. Lord Neuberger confirmed that the Tribunal has power to grant a dispensation on such terms as it thinks fit, providing that the terms are appropriate in their nature and effect.
20. At paragraph 56 Lord Neuberger said it was “clear” that a landlord may ask for dispensation in advance for example where works were urgent, or where it only becomes apparent that it was necessary to carry out some works whilst contractors were already on site carrying out other work - as with the present case. In such cases it would be “odd” if the (LVT) could not dispense with the Requirements on terms which required the Landlord, for instance (i) to convene a meeting of the tenants at short notice to explain and discuss the necessary works, or (ii) to comply with stage 1 and/or stage 3, but with (for example 5 days instead of 30 days for the tenant to reply.
21. Lord Neuberger also confirmed that conditions could be imposed as to costs, aside from the Tribunal’s general powers to award costs, (which at that time were limited), drawing a parallel to the Court’s practice to making the payment of costs a condition of relief from forfeiture.
22. The correct approach to prejudice to the tenants is to consider the extent that tenants would “relevantly” suffer if an unconditional dispensation was accorded. The Tribunal needs to construct what might happen if the consultation proceeded as required - for instance whether the works would have cost less, been carried out in a different way or indeed not been carried out at all, if the tenants (after all the payers) had the opportunity to make their points.
23. In this case, the Tribunal determined that dispensation should be granted, taking into account the following :-
 - (a) The works are required urgently to making the building wind and watertight, and to prevent internal damage.
 - (b) Only one quote has been received by the Applicants.

- (c) None of the Respondents has made any observations/objections to the Tribunal.
- (d) There is no apparent prejudice to the Respondent.s
- (e) The granting of dispensation does not confirm that the service charges costs are either reasonable or payable, and any leaseholder still has the ability to challenge any such costs charged by the Applicant.

Tribunal Judge J Murray LLB

12 February 2019

Annex A

Mr PR Storey
Mr B Iovanovici
Mrs S Parr
Mr & Mrs Thackray
Mr & Mrs S Kuznetsov
Miss S McCann
Mr P Fitzgerald
Mr & Mrs R Bridge
Ms SK Wilkinson
Mrs S Simpson
Mr O Ildem
Mr P Miall & Mr A Miall
Miss JR Walker
Ms Y Valli
Ms B Shadwick
Mr JTW Ratcliffe & Miss S Lewis
Miss AJ Jury
Mr T Waddington & Ms TAH Evans
Dr M Aggarwal
Mr I Richardson
Mr KS Kaplan
Mr JP Mortin & Mr F Mortin
Tillasu Ltd
Miss MJ Moran