



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

Case reference	:	LON/00BG/LDC/2020/0033
Property	:	Londinium Tower, 87 Mansell Street, London E1 8AP
Applicant	:	Proxima GR Limited (c/o Estates & Management Limited)
Representative	:	Darren Richards (Senior Property Manager - Rendall & Rittner)
Respondent	:	Lessees of Londinium Tower
Representative	:	(No participant)
Type of application	:	Application for dispensation from consultation requirements s20ZA Landlord and Tenant Act 1985
Tribunal member(s)	:	Judge N Carr
Date of decision	:	21 April 2020 Amended under rule 50, Tribunal Proceedings (First-Tier Tribunal) (Property Chamber) Rules 2013

DECISION

Determination

- (1) The tribunal grants dispensation from the consultation requirements of section 20 Landlord and Tenant Act 1985 in respect of the following works:
- (a) the waking watch;
 - (b) the M&E engineer;
 - (c) the Fire Consultant;
 - (d) the contractor(s) carrying out the remedial works; and
 - (e) the remedial works

- (2) In granting dispensation in respect of the works, the tribunal makes no determination as to whether any service charge costs are reasonable or payable.

The application

1. The applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 ('the Act') for dispensation from the requirements in section 20 of the Act to consult in advance of qualifying works.

Directions

2. The applicant issued the application on 18 February 2020. Directions were given on 25 February 2020, including for the applicant to notify leaseholders by post and by displaying a copy in communal areas of the application and the directions. The applicant confirmed that it had done so by letter of 2 March 2020.
3. Leaseholders had until 13 March 2020 to file with the tribunal a notice of opposition. No leaseholders have responded and therefore the bundle of documents provided by the applicant in its bundle received on 19 March 2020 is the material on which this determination is based.
4. The tribunal directed that the determination be made on paper unless either party requested a hearing. No such request has been made.

Brief Facts

5. The property is a modern development built in circa 2000. It comprises eighty leasehold dwellings in an eight-story tower block a separate building in which are situated eight maisonette dwellings, a commercial unit currently leased to Wetherspoons pub, and a basement car-park with vehicle stacker storage systems.
6. The applicant seeks urgent dispensation on grounds of the safety of the occupants. On 10 February 2020, the Fire Alarm Panel was found to have no power due to a fault. Attending engineers on that day found it could not be restored as the result of what was said to be a power-surge. A 'waking watch' had to be engaged as a result of there being no Fire Detection/Protection systems available. At the date of the application they were being retained at a daily rate of £1000. Their final day of engagement was overnight until 7am on Friday 21 February 2020.
7. Additional personnel were required to oversee, manage and advise on the remedial works. A Mechanical and Electrical Engineer at an hourly

rate of £180, and a Fire Consultant at a daily rate of £1,000 were retained. It was anticipated that contractors would need to be retained.

8. On 14 February 2020, the applicant sent to the leaseholders a Notice of Intention in accordance with section 20 of the Act. On the same date, the applicant sent its application for dispensation.
9. It appears from the application to have been anticipated that a new interim Fire Safety system was under consideration, however the need for this has now fallen away.
10. By 21 February 2020, the power was reinstated to the existing system.

The Law

11. Section 20ZA of the Act states that the tribunal may determine that there should be dispensation from the consultation requirements set out in section 20 of the Act in respect of any qualifying works or qualifying long term agreement when '*it is satisfied it is reasonable to do so*'.
12. In *Daejan Investments Ltd v Benson* [2013] UKSC 14, the Supreme Court set out the following factors to be taken into account:
 - a) The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
 - b) The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
 - c) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - d) The Tribunal has power to grant a dispensation as it thinks fit, including on terms, provided that any terms are appropriate.
 - e) The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
 - f) The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.

- g) The court considered that “relevant” prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
- h) The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- i) Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Decision

- 11. No leaseholder has objected, or made any other representation in this case. Therefore, there is no assertion of prejudice.
- 12. In the circumstances I consider it reasonable, in light of the facts, to dispense with the section 20 Notice requirements.
- 13. Accordingly, I grant dispensation pursuant to section 20ZA for the following:
 - (a) the waking watch;
 - (b) the M&E engineer;
 - (c) the Fire Consultant;
 - (d) the contractor(s) carrying out the remedial works; and
 - (e) the remedial works
- 14. In granting dispensation I make no determination of whether any service charge costs are reasonable or payable.

Name: N Carr

Date: 23 March 2020

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).