



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

Case Reference : **BIR/00CN/LDC/2022/0027**

Property : **Marley Heights, 17-19 Colwall Walk, Acocks Green
Birmingham, B27 6EL**

Applicant : **Marley Heights Residents Association Ltd**

Representative : **Principle Estate Management (Oliver Masters)**

Respondents : **The leaseholders of Marley Heights (1)
Alan Albert Haynes and Joyce Katherine Simpson (2)**

Type of Application : **An application under section 20ZA of the Landlord
and Tenant Act 1985 for dispensation of the
consultation requirements in respect of qualifying
works.**

Tribunal Members : **Judge T N Jackson
Mr V Ward BSc Hons FRICS Regional Surveyor**

**Date of Paper
Determination
and Decision** : **24 October 2022**

Date decision issued : **28 October 2022**

DECISION

© Crown Copyright 2022

Decision

To the extent that the statutory consultation requirements were not complied with, the Tribunal grants dispensation from the consultation requirements of section 20 Landlord and Tenant Act 1985 in respect of the Works to carry out a complete rewire of the communal areas of the Property.

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are payable or reasonable.

Reasons for decision

Introduction

1. By application dated 12 August 2022, the Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') of the consultation requirements provided for by section 20 of the same Act.
2. The application relates to the need to carry out a complete rewire of the communal areas of the Property following an electrical inspection which has identified dangerous items.
3. Directions were made on 19 August 2022. Direction 6 required each Respondent to complete a form which indicated whether they consented to the application or whether they opposed the application in whole or in part. It advised that if a Respondent failed to return the form, the Tribunal would assume that they did not oppose the application.
4. The only issue for determination is whether we should dispense with the statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be payable or reasonable.

Hearing/Inspection

5. After considering the papers, we determined that an inspection was unnecessary. Neither party requested a hearing and we determined the matters on the papers.

Background

6. The Property comprises 2 separate purpose-built blocks each containing 4 apartments.
7. In a Lease dated 12 October 1987 made between Alan Albert Haynes and Robert Stanley Simpson ('the Lessor') and Marley Heights Residents Association Limited ('the Lessee'), the Lessor demised the Common Parts and Grounds (as defined in Clause 1.6. of the Lease which excludes the eight flats which were intended to be demised to individual Lessees in the form of a standard lease) to the Lessee for 80 years from 25th December 1986.
8. Following an inspection of the electrical installation of the Property on 20 June 2022, the Applicant received an Electrical Installation Condition Report dated 7 July 2022. The inspection identified 6 items classified as C1 (Danger Present) and 6 items classified as C2 (Potentially Dangerous). It advised that the 50 year old electrical installation, was in a very poor and dangerous condition and needed a rewire. There was no earthing to any of the installation and the cables were rubber and breaking down.

Proposed Works

9. The Applicant proposes to carry out a complete electrical rewire of the communal area of the Property as more particularly described in the Description of Works attached in the Quotation dated 8 July 2022 from DJB Electrical Contractors.

Procurement Process

10. The Applicant has obtained three quotes for the Works:

8.7.22	DJB Electrical Contractors	£3415.20 (inc VAT)
13.7.22	DTC Electrical Ltd	£3416.80
Undated	NAFAIR Electrical Services (install as existing)	£1152 (exc VAT)
Undated	NAFAIR Electrical Services (install with emergency lighting)	£1368 (exc VAT)

Consultation

11. On 28 July 2022, the Applicant issued to leaseholders a Notice of Intention for work with an expiry date of 1 September 2022. We have not been provided with a copy of the Notice of Intention. The Applicant intended to serve the Notice of Estimates after the expiry date of 1 September 2022, to include two quotations that had been obtained in addition to that provided by the contractor who originally undertook the testing.

The Law

12. Section 20 of the 1985 Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures landlords must follow which are particularized, collectively, in the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a lessee has to pay by way of a contribution to ‘qualifying works’ (defined under section 20Z A (2) as works to a building or any other premises) unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual tenant in excess of £250. In accordance with section 20ZA (1) of the 1985 Act, the Tribunal may dispense with the consultation requirements ‘if it is satisfied it is reasonable’ to do so.
13. The proper approach to the Tribunal’s dispensation power was considered by the Supreme Court in *Daejan Investments Ltd v Benson* [2013] 1 WLR 854. In summary, the Supreme Court noted the following:
 - i. Prejudice to the tenants from the landlord’s breach of the requirements is the main, and normally the sole question for the Tribunal in considering how to exercise its discretion under section 20 ZA (1).
 - ii. The financial consequences to the landlord of not granting the dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
 - iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - iv. 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 tenant. It is not appropriate to infer prejudice from a serious failure to consult.

- v. 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.
- vi. Once the tenants have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
- vii. Compliance with the requirements is not an end in itself. Dispensation should not be refused solely because the landlord departs from the requirements (even seriously). The more serious and/or deliberate the landlords’ failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- viii. In a case where the extent, quality and cost of the works were in no way affected by the landlord’s failure to comply with the requirements, the dispensation should be granted in the absence of some very good reason.
- ix. The Tribunal can grant a dispensation on such terms as it thinks fit provided that they are appropriate in their nature and effect.
- x. 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 application under section 20 ZA (1).

Submissions

The Applicant

- 14. The Applicant submits that, due to the dangerous and potentially dangerous faults identified by the electrical inspection, it was necessary to instruct the contractor before the consultation procedure could be completed. It was intended that the Works be carried out week commencing 22 August 2022.

The Respondents

- 15. The Tribunal has not received any objection to the application from either Respondents (1) or Respondent (2).

Deliberations

- 16. We are satisfied that the proposed Works comprise ‘qualifying works’, as defined in section 20ZA (2) of the 1985 Act, as they relate to works on a building.
- 17. We are satisfied that it is reasonable to dispense with any outstanding consultation requirements in the circumstances of the present case, for the following reasons:
 - i. The Works relate to the complete electrical rewire of the communal areas of the Property following the receipt of an Electrical Installation Condition Report which identifies items classed as C1 and C2. C1 (Danger Present) refers to items where the safety of those using the installation is at risk and requires immediate remedial

action. C2 (Potentially Dangerous) indicates that, whilst those using the installation may not be at immediate risk, urgent remedial action is required to remove the potential danger. The safety of the Property, the residents and users are at risk until the Works are completed.

- ii. Respondents (1) and (2) have not responded to the Tribunal and, in accordance with Direction 6, are assumed not to oppose the application.
- iii. We do not consider that Respondents (1) or (2) are prejudiced or will suffer any loss of opportunity as a result of the dispensation of the statutory consultation requirements.

Determination

- 18. The Tribunal therefore determines that, to the extent that the statutory consultation requirements were not complied with, the consultation requirements are dispensed with in relation to the Works.
- 19. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are payable or reasonable.

Appeal

- 20. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

Judge T N Jackson