



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

Case Reference : **BIR/44UF/LDC/2022/0020**

Property : **The Manor House, Avenue Road, CV31 3ND**

Applicant : **The Manor House (Leamington Spa)
Management Company Limited**

Respondents : **The Leaseholders of the Management
Company**

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 C Payne
Ms J Rossiter MBA MRICS**

Date of Decision : **21 September 2022**

DECISION

Background

1. The Property is a purpose built residential apartment block containing 66 units over 4 stories.
2. By an application received by the Tribunal on 24 May 2022, the Applicant management company sought urgently dispensation from all or some of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”).
3. The justification for the application provided by the Applicant was as follows:

Urgent fire stopping works are required to the Property which is subject to a notice from Warwickshire Fire Protection Department under the Regulatory Reform (Fire Safety) Order 2005.

Tribunal Directions 15 June 2022

4. By Directions dated 15 June 2022, the Applicant was instructed to send to the Tribunal and the Respondents, the following documents:
 - 4.1. A copy of the directions dated 15 June 2022;
 - 4.2. A copy of the application form and the accompanying documents;
 - 4.3. A statement of case explaining the purpose of the application and the reason why the dispensation is sought including copies of correspondence from Warwickshire Fire Protection Department;
 - 4.4. Copies of any invoices and quotations relating to the works; and
 - 4.5. Any relevant documents including reports on the works required and specifications etc.
5. By the Directions of 15 June 2022, the Respondents were instructed, by 13 July 2022, to complete the reply form provided with the Directions, and return it to the Tribunal, with a copy to the Applicant indicating whether they consented to the application (i.e., agreed to dispensation from full consultation) or, if they opposed the application (in whole or in part) and the reasons why.
6. Within their application, the Applicant had indicated that they were content with a paper determination. If any Respondent required an oral hearing, they were to indicate accordingly on the reply form.

7. The Respondents were advised if they failed to return the form, the Tribunal would assume that they did not oppose the dispensation application.

Tribunal's Directions 15 August 2022

8. On 15 August 2022 the Tribunal convened to consider the matter on paper. It was noted that on the 28 June 2022 the Applicant had sent a letter to the Respondents. The letter appended a copy of the Directions dated 15 June 2022 but failed to address the remainder of the directions as follows:

- 8.1. There was no reference in the letter to a copy of the application form and the accompanying documents being provided to the Leaseholders.

- 8.2. Summarised extracts from the Warwickshire Fire Protection Department's correspondence were included in the letter identifying defects and a general indication that actions were required to be taken to rectify those defects. However, no statement setting out what specific works were being proposed to address the defects was provided and there was no explanation of why the dispensation was sought in relation to any particular works. As such, it was impossible for the Leaseholders and the Tribunal to ascertain what the works actually were for which dispensation was being requested or to have any clarity as to why those specific works were of a nature that dispensation would be appropriate.

- 8.3. No copies of any invoices and quotations relating to the works were provided. While the Tribunal will not determine the reasonableness or payability of those costs as part of this application, the inclusion of such documentation would make clear to the Leaseholders and Tribunal what works were actually being proposed to address the defects and for which works dispensation was being sought. The vague reference to anticipated costs in the covering letter sent to Leaseholders was not sufficient to ascertain this information.

- 8.4. No further relevant documents, including reports on the works required and specifications, were provided.

9. While evidence was provided by the Applicant that there are urgent fire safety concerns that the Warwickshire Fire Protection Department have raised regarding the Property, the Applicant failed to particularise the works for which dispensation was being sought. The Tribunal noted that there had already been significant delays in addressing the issues raised by Warwickshire Fire Protection Department in their Notice dated 30 March 2022. To avoid further potential delay to completion of works that may be of an urgent nature in relation to that Notice, the Tribunal determined to allow

the Applicant a further opportunity to address the issues with their Application and their failure to comply with the Tribunal's directions.

10. On 15 August 2022, the Tribunal issued further directions by which the Applicant was instructed to send the Tribunal and the Respondents by 30 August 2022 the following documents:
 - 10.1. A copy of the application form and accompanying documents but for the avoidance of doubt **not** the copy of the lease and **not** the list of leaseholders.
 - 10.2. A statement explaining the purpose of the application, including a list of the specific works for which dispensation is sought and the reason why dispensation is sought for those works including copies of correspondence from Warwickshire Fire Protection Department.
 - 10.3. Copies of any invoices and quotations relating to works.
 - 10.4. Any relevant documents including reports on the works required and specifications etc.
11. By the Directions of 15 August 2022, the Respondents were instructed, by 14 September 2022, to complete the reply form provided with the Directions, and return it to the Tribunal, with a copy to the Applicant indicating whether they consented to the application (i.e., agreed to dispensation from full consultation) or, if they opposed the application (in whole or in part) and the reasons why.

The Submissions of the Parties

The Applicant's Initial Submissions

12. The Property is subject to a notice from Warwickshire Fire Protection Department requiring remedial works to be undertaken under the Regulatory Reform (Fire Safety) Order 2005. The Notice sets out an extensive number of issues that have been identified under Article 8, Article 8, Article 11, Article 13, Article 15 and Article 17(1). A copy of the Inspection Report has also been provided to the Tribunal.
13. A copy of the Notice sent to Exclusive Property Management Limited on 30 March 2022, following an inspection on 21 February 2022, was provided to the Tribunal. It is understood that Exclusive Property Management ceased to manage the Property from 1 April 2022, at which point Metro PM took over management on behalf of the Applicant.
14. The covering letter noted that the Warwickshire Fire Protection Department would return to inspect the Property in June 2022 to undertake a further inspection of the Property and ensure the remedial works in the Notice had been completed. The

Tribunal understands that this inspection has now been put back to September 2022.

15. The Applicant brought the following sections of the Notice to the attention of the Tribunal:

15.1. Deficiencies under Article 8- Inadequate measures to reduce the risk of fire spread

15.1.1. There is inadequate structural fire protection to prevent fire spread. Specifically, but not limited to some service cupboards which are lined with unskimmed plasterboard or not lined.

15.1.2. Penetrations by pipes or cables not effectively fire stopped within a number of service cupboards outside Apartment 51 and in the blocks containing Apartments 24-42, 45-54 and 55-65.

15.2. Deficiencies under Article 8 – Securing the means of escape

15.2.1. Structure protecting escape routes is not sufficiently fire resisting

15.2.2. Lobby serving apartments 63-65 does not provide smoke detection to operate the Automatic Opening Vent (AOV) installed in the lobby.

15.3. Deficiencies under Article 13 – Detectors and Alarms

15.3.1. The premises are not equipped with appropriate detectors and alarms necessary to safeguard people. The AOV installed in the lobby serving apartments 63-65, requires smoke detection to operate.

16. The Applicant has sought to apply for dispensation in respect of the following 'Works':

16.1. Works to address Deficiencies under Article 8- Inadequate measures to reduce the risk of fire spread

16.1.1. Upgrade the fire resistance of the existing structure to achieve 60 minute fire resistance.

16.1.2. Install suitable fire stopping around pipes and services where the pipes pass through floors.

16.1.3. Plastic service pipes penetrating fire compartments, floors and walls to be equipped with suitable fire stopping solution to prevent spread of fire.

16.2. Works to address Deficiencies under Article 8 – Securing the means of Escape

16.2.1. Doors, walls, floors and ceilings protecting escape routes should be upgraded or replaced as required.

16.3. Works to address Deficiencies under Article 13 – Detectors and Alarms

16.3.1. Upgrade fire alarm system to comply with British Standard 5839-1.

17. No particularisation of what the 'Works' referred to in paragraph 16 consisted of was provided to the Tribunal.
18. The Applicant submitted that the consultation process with Leaseholders at the point the application was made had involved letters being issued to the Leaseholders. No copies of the letters referred to in the Applicant's Application were provided to the Tribunal. It would appear that no efforts to consult the Leaseholders, other than the communications directed by the Tribunal, have been made.
19. The only letter from the Applicant to the Respondent Leaseholders that has been provided to the Tribunal is the letter dated 28 June 2022 purporting to comply with the Tribunal's Directions. In that letter the Deficiencies detailed at paragraph 11 and works proposed at paragraph 12 are detailed. The letter also sets out the anticipated costs for works as follows:
 - 19.1. Works required to Service Risers £29,120 plus VAT.
 - 19.2. Removal and Reinstatement of Wall Partitions £4,060 plus VAT
 - 19.3. Upgrading the fire alarm to company with BS 5839-1 estimated to be '*in the region of £25,000*'. A survey by an engineer is pending.
20. No copies of any of the quotes were provided to the Tribunal or Leaseholders. No breakdown was provided to the Tribunal or Leaseholders of what specific works were included in the quotations referred to in the letter of 28 June 2022.

Applicant's Further Submissions to the Tribunal

21. On 26 August 2022, Mr Henry Arnold, on behalf of the Applicant sent an email to the Tribunal which stated:

We write to confirm we have complied with the directions dated 15 August, in respect of the above property.

Please find attached a covering letter and bundle which has been issued today. Please be advised the letter issued has been addressed to the leaseholders and is not generic – attached is a copy of the letter.

The Bundle includes a copy of the respondent form; accompanying documents ; stated works required and copies of the letter from Warwickshire Fire Protection Department ; copies of quotation received from contractor.

22. The email had nine attachments, which are the same documents previously provided to the Tribunal, consisting of:
 - 22.1. Blank Respondent Form
 - 22.2. 'Leaseholder Bundle' consisting of the following documents:
 - 22.2.1. Tribunal's Directions dated 15 June 2022

- 22.2.2. Application Form
 - 22.2.3. Email from Pat Ryan of Fire Compliance Service dated 11 April 2022 referring to Budget Costs for works ‘*as per previous reports*’ (reports not provided)
 - 22.2.4. The Four Reports from East Anglia Fire Protection Limited dated 25 February 2022 identifying 28 issues in need of rectification
 - 22.2.5. Letter from Warwickshire County Council dated 30 March 2022 advising that there would be a follow up inspection on 6 June 2022, attached to which is a Schedule summarising the issues and remedial action required
 - 22.3. A further copy of the letter from Warwickshire County Council dated 30 March 2022 referred to a t 21.2.4
 - 22.4. A table setting out Defects and Required Action from reports, with no detail of any specific works proposed to address the Required Actions
 - 22.5. A further copy of the email from Pat Ryan of Fire Compliance Service dated 11 April 2022 referring to Budget Costs for works ‘*as per previous reports*’ (reports not provided)
 - 22.6. Further copies of the Four Reports from East Anglia Fire Protection Limited dated 25 February 2022 identifying 28 issues in need to rectification
23. Notably, no copy of the ‘covering letter’ dated 26 August 2022, the statement of ‘stated works required’ or the ‘quotation received from contractor’ referred to in Mr Arnold’s email were appended to his email to the Tribunal and, as such, the Tribunal was unable to take into consideration those documents when making this decision.

The Respondents Initial Submissions

- 24. Eleven Leaseholders wrote to the Tribunal confirming that they support the application for dispensation from full consultation for the Works and that they were happy for the matter to be decided on the basis of written representations. Given the nature of the issues identified with the property it is clear that the Leaseholders wish the works to be done to ensure the property is safe as soon as possible.
- 25. Two Leaseholders objected to the application for dispensation.
- 26. One Leaseholder, Mr Matthew Montanaro, of Apartment 46 Manor House, responded to object to the application on the following basis:
 - 26.1. The Applicant has been aware that the urgent issues needed to be addressed since April 2022. However, they did not apply to the Tribunal until 24 May 2022 and did not provide and information to the Respondent Leaseholders until 28 June 2022 pursuant to the Tribunal’s directions. Had the Applicant

acted promptly in April 2022 then there has been ample time to follow a s20 Consultation with the Leaseholders.

26.2. The letters referred to in the Application as having been sent to Leaseholders by way consultation were not sent. The first information provided to Leaseholders was on 28 July 2022, well after the Application was made.

26.3. The Respondent Leaseholders have only been provided with a quote for part of the works, which is subject to a further site visit, and no quote has been provided to them for the alarm system.

26.4. There is no reserve fund held for the property so the works will result in a supplemental charge to the Respondent Leaseholders.

26.5. While Mr Montanaro recognises that the Tribunal are not asked at this time to determine the reasonableness of the charges to the Respondent Leaseholders for the works, the Applicant has provided no indication of the overall expense to each Leaseholder. If dispensation is given, the normal process of obtaining at least one other alternative quote would not be followed and that this would result in the Leaseholders being *essentially expected to 'write a blank cheque'* for the works.

26.6. Mr Montanaro confirmed he was content for there to be a paper determination.

27. Another Leaseholder, Mr George Mackay made submissions to the Tribunal. In respect of the application for dispensation, Mr Mackay noted the urgent need to address the issues raised by Warwickshire Fire Protection Service but objected to the application before the Tribunal on the following basis:

27.1. *"The full scope and justification for major works has not been fully explained"*

27.2. There has been no investigation as to whether the fire alarm system needs to be upgraded at an estimated cost of £25,000 plus VAT. The issue noted in the report regarding an Automatic Opening Vent could be addressed by installing a smoke detector at considerably less cost.

27.3. There has been a lack of investigation of options to address the issues and a lack of communication with Leaseholders.

The Respondents Further Submissions

28. Eleven Leaseholders wrote to the Tribunal confirming that they support the application for dispensation from full consultation for the 'Works' and that they were happy for the matter to be decided on the basis of written representations.
29. Three Leaseholders objected to the application for dispensation, with Mr Mackay making a further statement in which he confirmed that:

The resent documents received from Metro PM are word for word the same as those sent to us on 28/06/2022... The resent documents had a covering letter dated 26/08/2022

30. Mr Mackay reiterated his previous objections and confirmed that he does not consider that, despite the additional covering letter dated 26/08/2022, the 'full scope for major works has not been fully explained...'

Hearing and Inspection

31. As there have not been any requests for an oral hearing, the Tribunal has determined this matter on the basis of the written submissions of the parties and without an inspection of the Property.

The Lease

32. The application before the Tribunal relates only to the requested dispensation from the statutory consultation regime in the Act as interpreted by the courts, which is set out below.

The Law

33. Section 20 of the Landlord and Tenant Act 1985 ("185 Act"), as amended by the Commonhold and Leasehold Reform Act 2002, sets out the consultation procedures landlords must follow which are particularised, collectively, in the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a leaseholder has to pay by way of a contribution to "qualifying works" (defined under section 20ZA (2) of the 1985 Act as 'works to a building or any other premises') unless the consultation requirements have been met. Under the Regulations, section 20 of the 1985 Act applies to qualifying works which result in a service charge contribution by an individual leaseholder in excess of £250.00.
34. Essentially, there are three stages in the consultation procedure, the pre-tender stage; Notice of Intention, the tender stage; Notification of Proposals including

estimates and, in some cases, a third stage advising the leaseholders that the contract has been placed and the reasons behind the same.

35. Section 20ZA(1) of the 1985 Act states:

(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.

36. In *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 (“*Daejan*”), the Supreme Court noted the following:

- a) 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 20ZA (1).
- b) The financial consequences to the landlord of not granting 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 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.
- e) 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.
- f) Once the tenants have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
- g) 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 landlord’s failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.

- h) 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.
 - i) The Tribunal can grant a dispensation on such terms as it thinks fit provided that they are appropriate in their nature and effect.
 - j) 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).
37. For the sake of completeness, it may be added that the Tribunal's dispensatory power under section 20ZA of the 1985 Act only applies to the aforesaid statutory and regulatory consultation requirements in the Act and does not confer on the Tribunal any power to dispense with contractual consultation provisions that may be contained in the pertinent lease(s).

The Tribunal's Determination

38. It is noted that on the 26 August 2022 the Applicant sent a further letter to the Respondents seeking to comply with the directions given by the Tribunal on 15 August 2022. However, based on the information before the Tribunal, the Applicant again failed to fully comply with the Tribunal's directions as follows:
- 38.1. The Applicant failed to provide any statement explaining the purpose of their application, which should have included a list of the specific works for which dispensation was sought and the reason why dispensation was being sought for those works.
 - 38.2. The Applicant did not provide copies of any invoices and quotations relating to the specific works they are proposing to carry out.
 - 38.3. The email from Pat Ryan of Fire Compliance Service dated 11 April 2022 refers to *'budget costs to carry out the fire stopping remedial works required to the service risers... as per the reports previously sent'* and *'budget price for removal and reinstatement of the wall that partitions the risers that currently stops access including mechanical/electrical services that would have to be moved first'*. Without the detail of the reports referred to in that email, it is impossible for the Tribunal to ascertain to which specific works these comments relate or how those specific works might relate to the issues identified by the Warwickshire Fire and Rescue Service or why dispensation is required in relation to any specific works.

- 38.4. The Applicant did not provide any further relevant documents, including reports on the works required and specifications.
39. It is clear to the Tribunal from the submissions made that substantive works need to be undertaken promptly to the Property in order to address the serious issues identified by Warwickshire Fire Protection Department under the Regulatory Reform (Fire Safety) Order 2005 and communicated in the Notice served on 30 March 2022.
40. It is likely that the volume of works required to address such a significant list of issues would fall under section 20 of the 1985 Act as they will be qualifying works which are likely to result in a service charge contributions by an individual leaseholder in excess of £250.00.
41. The Applicant has been aware of the serious issues, some of which significantly impact the safety of those occupying the Property, since at least March 2022. They delayed making an application to the Tribunal for dispensation until 24 May 2022 at which point it appears they had no clear plan of works to tackle the issues that had been identified. Based on the submissions to the Tribunal it would appear that, even now, some six months after the Fire Service raised concerns, the Applicant has still not commissioned a comprehensive report on the works needed to address the issues identified or obtained quotes for the specified works that may need to be undertaken. This has resulted in a considerable waste of time and cost, with the Leaseholders no closer to having the necessary works done to make the Property safe.
42. Unfortunately, as a result of the Applicant's repeated failures, first in failing to particularise the works and explain the basis of their application in the Application Form, second in failing to comply with the Tribunal's directions dated 15 June 2022 and third in failing to comply with the Tribunal's directions dated 15 August 2022, it is impossible for the Tribunal to ascertain what works the Applicant is proposing to undertake to the Property, for which of those works dispensation is being sought or the Applicant's case for why dispensation is required for such works.
43. Accordingly, the Tribunal determines that, on the evidence provided, the Applicant has failed to establish any case for dispensing with the consultation requirements of section 20 of the Act.
44. On that basis, the Applicant's Application for dispensation is dismissed.

Appeal

45. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Judge C Payne