FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/33UF/LDC/2021/0030**
HMCTS code (paper, video, audio)	**:**	**A:BTMMREMOTE**
Property	**:**	**Trafalgar Court, 42 Cromer Road, Mundesley, Norfolk NR11 8DB**
Applicant	**:**	**Martin Kingsley (Manager)**
Respondents	**:**	**1. The leaseholders of the Property** **2. London Land Securities Limited**
Type of application	**:**	**For dispensation from consultation requirements** - Section 20ZA of the Landlord and Tenant Act 1985
Tribunal members	**:**	**Judge David Wyatt**
Date of decision	**:**	**3 September 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote audio hearing. The form of remote hearing was A:BTMMREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents I was referred to are described in paragraph 6 below. I have noted the contents.

The tribunal's decision

The tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with all the consultation requirements in relation to the works described in the application form to carry out external repairs to the rear of the building at the Property.

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Reasons for the tribunal's decision

The background

1. The Applicant, Martin Kingsley MIRPM AssocRICS of K&M Property Management Ltd, is the current tribunal-appointed manager of the Property. Most recently, by a management order dated 18 August 2021 made in case number CAM/33UF/LOA/2021/0001, accompanied by written reasons (the "**Management Decision**"), his appointment under section 24 of the Landlord and Tenant Act 1987 was extended for a further five years. Having intimated in those proceedings that he would do so, the Applicant applied for dispensation from the statutory consultation requirements in respect of qualifying works to carry out external repairs to the rear of the building at the Property.

2. The Property is a former Edwardian hotel on the cliff top at Mundesley. From the 1980s, it was partially converted into flats. It now comprises 32 flats. Most of these flats are retained or held on long leases by the Landlord or persons connected with it, who operate a lettings business for holiday or other occupiers. The Property and the background are described in detail in the Management Decision.

3. It appears the leaseholders will be liable under their leases to contribute towards the cost of the works through the service charge. In addition, it appears the freeholder and landlord, London Land Securities Limited (the "**Landlord**"), will in relation to any flats not let on long leases be liable under the terms of the management order to contribute towards the cost of the works. The leaseholders and the Landlord are the Respondents to this application because the contributions of the leaseholders (and, potentially, of the Landlord) towards the cost of the works would be limited to a fixed sum unless the statutory consultation requirements, prescribed by section 20 of the Landlord and Tenant Act 1985 (the "**1985 Act**") and the Service Charges (Consultation etc) (England) Regulations 2003 (the "**Regulations**") are:

   (i) complied with; or

   (ii) dispensed with by the tribunal.

4. In this application, the Applicant seeks a determination from the tribunal, under section 20ZA of the 1985 Act, to dispense with the consultation requirements. The tribunal has jurisdiction to grant such dispensation if satisfied that it is reasonable to do so. In this application, the only issue for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements. This application does not concern the issue of whether any service charge costs of the relevant works will be reasonable or payable.

Procedural history

5. On 5 August 2021, a procedural judge gave case management directions. These required the Applicant to serve copies of the application form and directions on each of the Respondents, together with an estimate of the total cost of the works. The directions included a reply form for any Respondent who objected to the application to return to the tribunal and the Applicant, indicating whether they wished to have an oral hearing. Any such objecting Respondent was required to respond by 20 August 2021, with a statement in response to the application and any documents they wished to rely upon.

6. The Landlord responded on 19 August 2021 to object to the application and request an oral hearing, enclosing their statement of case and the documents they relied upon. In addition to the substantive grounds of objection considered below, the Landlord said "*several*" leaseholders who paid service charges had not received a copy of the application. The Applicant confirmed copies were posted and e-mailed to all leaseholders, using the same addresses used for other management correspondence, and a copy was placed on the noticeboard in the entrance hallway of the building. The Landlord has not explained which leaseholders are said not to have received the application. The Landlord's registered office remains the contact address for all the flats except the small number of "independent" leaseholders, most or all of whom were aware from the previous proceedings that this application was likely to be made. In the circumstances, I am satisfied that the application documents were sufficiently served on the Respondents. None of the Respondents, other than the Landlord, objected or otherwise responded to the application. Pursuant to the directions, the Applicant produced a bundle, for use at the hearing, of 98 pages. Mr Sharma had not received his hard copy of the bundle in the post. The Manager provided evidence that (as directed) it had been made available by e-mail on 27 August 2021 through a download facility and a hard copy had been posted the same day, when the Landlord requested a paper copy.

7. The hearing on 3 September 2021 was attended by the Applicant and by Ravinder Sharma, a director of the Landlord. Mr Sharma confirmed he had printed the electronic copy of the bundle and read the contents. On reviewing the bundle, which included photographs, I was satisfied that an inspection of the Property was neither necessary nor proportionate to the issues to be determined.

The application

8. The works described in the application form include repairs to rendering, brickwork, pointing, flashing, roofing and associated repairs all to the rear of the building, which faces the sea. As explained in more detail in the Management Decision, the building stands proud and

exposed to the elements. After storm damage in October 2020, the Applicant had arranged for scaffolding to be erected (within a week, Mr Sharma said) and emergency external repairs to be carried out.

9. Following reports of other leaks into flats and problems identifying whether and which leaks were caused by exterior problems as opposed to problems with internal services for which leaseholders were responsible, the Applicant ultimately found that damp was coming into certain flats because areas at the rear wall needed to be repaired. For the reasons explained in the Management Decision, it did not appear practicable to carry out an adequate inspection without erecting scaffolding. Accordingly, the Applicant had arranged for scaffolding to be erected and had met the proposed contractor on site to prepare a simple schedule of works and test their prices. He contended the work should be carried out as soon as practicable, without awaiting consultation, to minimise scaffolding costs and protect the building from the weather.

10. The estimate provided by J&G Contractors Ltd ("**J&G**") for the relevant works is dated 23 July 2021 in the total sum of £28,270 plus VAT and refers to attached photographs. This figure includes £8,500 for scaffolding, £9,450 for making good render and painting, an allowance of £2,800 for pointing and an allowance of £3,000 for brick refacing, plus smaller items of work described in the estimate.

The law

11. As noted above, the tribunal has jurisdiction to grant dispensation if satisfied that it is reasonable to do so. As discussed at the hearing:

    (i) following the decision of the Supreme Court in Daejan v Benson [2013] UKSC 54, the tribunal needs to focus on the issue of the extent, if any, to which payees would be prejudiced (normally, by paying for inappropriate works or paying more than would be appropriate), by the failure to comply with the consultation requirements; and

    (ii) the relevant consultation requirements are those set out in Part 2 of Schedule 4 to the Regulations.

The Respondents' position

12. The Landlord's main concerns were that a more detailed schedule of work should be prepared by a surveyor and two like-for-like quotes should then be obtained from contractors "unconnected" with the Applicant. In their statement of case, they indicated that if this had been provided they would not have objected to dispensation. However, at the hearing, Mr Sharma said a surveyor should also look at the front

of the building and prepare a full schedule of all works required, with additional scaffolding for other areas, to identify and deal with any other areas which might cause damp problems, and deal with the tennis court at the same time. He contended that work had not been done properly in the past. He accepted work needed to be done, or re-done. He did not want a cheap job, or only part of the necessary works, and wanted to ensure the work would be done properly. At the hearing, he argued in effect that the relevant consultation requirements should be complied with in full, without any dispensation.

13. In support of those submissions, the Landlord said the single estimate from J&G was very general and J&G had been the building contractor carrying out work on the Property since 2019. They said two payments of £3,888 had been made to J&G on 12 October 2020 plus several other payments for different sets of work, producing a list. They said the information given to the tribunal at the previous hearing, about the estimated costs of the scaffolding for the relevant works being £7,000, was untrue. It was pointed out that the Applicant had already said £7,000 was the estimate given to him at the time and he would be testing the £8,500 in the written estimate from J&G (which had been updated and sent to him on 6 August 2021; he had arranged for it to be circulated but had been on leave and on his return the directors of J&G had been away, so that discussion had not yet been possible). When asked whether the estimate included any inappropriate work, Mr Sharma said a quantity should be shown in square metres for the item for painting and making good render, ensuring the materials used were suitable for the sea-facing wall. He also queried the work to repair a window to Flat 19 for £820 plus VAT, asking whether scaffolding was needed for this and referring to possible other work.

14. Amongst other objections, the Landlord also said work should have continued to cover other areas after the storm damage in October 2020, saying the scaffolding should have been moved to other areas. They also complained about historic and other matters which have less weight for the purposes of this application, including an allegation that the Applicant had not kept them informed about their claim to the building insurers in respect of the internal water damage caused by the storm in October 2020.

The Applicant's position

15. The Applicant said there seemed to be confusion about the previous emergency works, which involved a tower scaffold to enable specific work to stop water ingress from external storm damage in October 2020. An insurance claim had been made and the insurance was in the name of the Applicant and the Landlord. The bundle included correspondence from the Applicant to the Landlord suggesting how the insurance claim could be dealt with. The current proposed repair works could not realistically have been done at the same time. They

were intended to cover the minimum repair work needed to give the rear of the building adequate protection before winter. They had been prompted mainly by the Landlord's requests and concerns about damp in some of their flats. The Applicant said at the hearing that he was mindful of the need to seek to ensure (after a large major works programme several years ago to improve the main roof and other parts of the building from seriously damaged and very poor condition) interim costs are affordable for leaseholders. The building is large and complex. The Applicant thought more widespread major works should be planned at suitable intervals; his current approach was to carry out interim repair works as appropriate, while continuing to build up the reserve fund for any more extensive major works in the future.

16. The Applicant confirmed in the papers prepared for the hearing that he was not connected with J&G. He said other contractors had been used for maintenance work, not solely J&G. However, J&G were now familiar with the building and, in his opinion, a reliable contractor. He pointed out that the Landlord had not expressed any concerns about the work J&G had carried out in the past. He said he had been involved in two larger major works projects where independent chartered surveyors had approved the rates proposed by J&G for the same types of work as the main items in the relevant estimate. In his view, their charges were competitive and the proposed work was appropriate. He pointed out that the estimate from J&G was supported by photographs. In response to the specific points made by Mr Sharma at the hearing, he confirmed he would be discussing the scaffolding charge with J&G. He also agreed he would arrange to confirm to Mr Sharma the quantity of painting and rendering covered by the estimate. He confirmed the relevant areas were indicated by the location of the scaffolding, at the two apex areas of the roof and areas to the right. As indicated in the reply he had produced in the bundle, he said the works would be supported by detailed "before and after" photographs showing the disrepair and the remedial works, which could be provided to the Landlord and any leaseholder on request. He said this approach was preferable to waiting to have a surveyor carry out a more detailed schedule of work, where the type of work involved was inevitably variable depending on for example the individual parts of render or pointing which needed attention, and then going out to seek two quotations. With winter approaching, and to seek to guard against further damage and minimise scaffolding costs, he submitted that it was in the interests of all concerned to proceed as he proposed.

The tribunal's decision

17. The application and relevant estimate had been circulated several weeks before the hearing. None of the Respondents other than the Landlord had objected to dispensation or made any other comments or observations. However, it is important to bear in mind that the Landlord, or those connected with it, are likely to be paying most of the service charges for the relevant works. I have summarised above only

their main points, but I have taken into account all the points they made in relation to this application.

18. I consider that the Landlord has not identified any real prejudice which would be caused by the failure to comply with the consultation requirements, or any other good reason why dispensation should not be granted. Generally, I accept the evidence and submissions of the Applicant, who has addressed the relevant concerns raised by the Landlord. With the benefit of hindsight, it might have been possible to start the process earlier and at least partially comply with the consultation requirements. However, I am satisfied that it probably was not practicable to specify works without scaffolding in place, which immediately starts costs running or involves costs of striking and re-erecting scaffolding, and some flexibility is needed given the nature of these works. In the circumstances, I consider that it is reasonable for the proposed interim repair work to be carried out as soon as possible (as seems to have been urged by the Landlord in its earlier correspondence), before the weather worsens and to minimise scaffolding costs. I am satisfied that I should not make the dispensation conditional; no conditions were proposed and the matters agreed at the hearing will remain relevant in respect of the issues described below. In the circumstances, I am satisfied that it is reasonable to dispense with all the statutory consultation requirements in relation to the relevant works.

19. As noted above, this decision does not determine whether the cost of the works is reasonable or payable. As mentioned at the hearing, the parties are encouraged to co-operate with each other to endeavour to avoid any dispute about this. In view of the approach which has been taken, the Applicant will of course need to be particularly careful to ensure that good photographic (and any other relevant) records are made, as he has proposed, so that if any payees have any concerns they can see whether the relevant costs have been reasonably incurred, as well as ensuring that the relevant works are of a reasonable standard.

20. The tribunal determines under section 20ZA of the 1985 Act to dispense with all the consultation requirements in relation to the works described in the application form to carry out external repairs to the rear of the building at the Property. There was no application to the tribunal for an order under section 20C of the 1985 Act.

21. The Applicant is responsible for serving a copy of this decision on the Respondents.

Name: Judge David Wyatt **Date:** 3 September 2021

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).