



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

**Case reference** : **LON/00BE/LDC/2019/0021**

**Property** : **93-95 Balfour Street, London SE17  
1PB**

**Applicant** : **Sunette Zone**

**Representative** : **Ringley Law**

**Respondent** : **Leaseholders of 93-95 Balfour  
Street**

**Representative** : **Unrepresented**

**Type of application** : **To dispense with the requirement  
to consult with lessees about major  
works**

**Tribunal member(s)** : **Judge A Sheftel**

**Date and venue of  
Paper Determination** : **11 March 2019 at 10 Alfred Place,  
London WC1E 7LR**

**Date of decision** : **11 March 2019**

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**DECISION**

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### **Decision of the tribunal**

- (1) The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works detailed at paragraph 9 below.**
- (2) In granting dispensation in respect of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

### **The application**

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the 1985 Act) from the consultation requirements required by Section 20 of the 1985 Act.
2. Directions were issued on 12 February 2019. These provided that the Tribunal will determine the application on the basis of written representations, unless any party makes a request for an oral hearing within 7 days of that date.
3. The Applicant's solicitors have provided copy letters dated 14 February 2019, serving copies of the application and Directions on the Respondents.
4. No requests have been received for an oral hearing and the application is therefore determined on the papers received.
5. The only issue for the Tribunal is if it is reasonable to dispense with any statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

### **The law**

6. The relevant section of the 1985 Act reads as follows:

“20ZA Consultation requirements

(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.”

7. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson* [2013] UKSC 14. In summary the Supreme Court noted the following:
- 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.
  - 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.
  - Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
  - 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).
  - 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.
  - 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.
  - 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.
  - Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

### **Background**

8. The property is a purpose built block comprising 8 residential flats.

9. According to page 8 of the application, the Applicant seeks dispensation in respect of roof repairs, installing a new communal window and an AOV smoke control system. The application highlights, in particular, the urgency of the roof repairs.
10. The application and statement of case note that a notice of intention to carry out roof repair works was served on the Respondents on 17 May 2018 and a dispensation application was submitted simultaneously. This was done in response to reports of a leak in the roof affecting both flats and a communal stairwell. Upon receipt of the notice, the Respondents requested a full survey to be carried out, following which the application was discontinued. Following receipt of the report, the Respondents now wish for the works to be carried out without undue delay.
11. The application notes that although the consultation requirements have not been complied with in respect of the above works, the Applicant did send numerous letters and emails to Leaseholders notifying them of the cost and progress in dealing with the matter. Indeed, the bundle provided to the tribunal contains an email from a Mr Mark Quincey, lessee of Flat 6, dated 5 February 2019, stating that he acts on behalf of the other leaseholders and that they “are all happy to support the dispensation of consultation”.

## **Decision**

12. On the facts of the present case. The Tribunal notes, in particular, that:
  - (1) none of the respondents has objected to the application – and indeed it is suggested that the application is in fact supported by the lessees; and
  - (2) no evidence has been submitted identifying the type of prejudice referred to in paragraph 6 above.
13. In the circumstances, it is considered that it is reasonable to dispense with the consultation requirements for the specific works. Accordingly, the Tribunal grants dispensation from the consultation requirements of S.20 of the 1985 Act in respect of the works set out at paragraph 9 above.
14. In granting dispensation in respect of the application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

**Name:** Judge A Sheftel

**Date:** 11 March 2019

### **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).