



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

**Case reference** : **LON/00BK/LDC/2019/0061**

**Property** : **14-15 Fitzhardinge Street London W1H  
6EQ**

**Applicant** : **Joven Investments Limited**

**Representative** : **Brutin Street management**

**Respondent  
leaseholders** : **Various leaseholders as per the  
application**

**Representative** : **-**

**Type of application** : **To dispense with the consultation  
requirements under S.20 Landlord  
and Tenant Act 1985**

**Tribunal member(s)** : **Mrs E Flint DMS FRICS**

**Date and venue of  
determination** : **28 May 2019  
10 Alfred Place London WC1E 7LR**

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**DECISION**

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## **Decision of the tribunal**

- (1) The Tribunal grants dispensation from all of the consultation requirements under S.20 of the Landlord and Tenant Act 1985 in relation to the works to the gutter and roof.

## **The Background**

1. The application under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) was made by the agents on behalf of the applicants on 16 April 2019.
2. The application concerned remedial works to prevent further water ingress into three apartments within the block. The building is being refurbished.
3. Directions were issued on 26 April 2019 requiring the applicant to prepare bundles by 21 May to include statements
  - (i) Setting out the full grounds for the application, including all of the documents on which the landlord relies and copies of any replies from the tenants;
  - (ii) The Leaseholders were asked to confirm by 14 May whether or not they would give their consent to the application.
  - (iii) In the event that such agreement was not forthcoming the leaseholders were to state why they opposed the application; and provide copies of all documents to be relied upon.
4. Responses were received from the leaseholders of Flats 3, 5 and 6 supporting the landlord’s application. No objections were received from the remaining leaseholders.
5. The leaseholders were informed in the Directions issued by the Tribunal that the question of the reasonableness of the works or cost was not included in this application, the sole purpose of which is to seek dispensation.

## **The Evidence**

6. On 9 April 2019 Bruton Street Management wrote to all the leaseholders advising that there had been water ingress from the mansard overlooking Fitzhardinge Street which had severely affected several flats. The letter set out the proposed works to remedy the defects. The Section 20 Notice of Intention and details of two tenders in the sums of £8,400 and £10,926 were also enclosed.

7. It seems that the gutter on the mansard roof is prone to blockages from leaves and debris from surrounding trees. The mansard roof that is accessed through Flat 5 is drained by one pipe which runs from the mansard roof into a hopper and down the building into the below ground drainage. The entry into the pipework is covered by a mesh balloon to stop leaves blocking the pipework.
8. It is suspected that last year during unusually high rainfall and debris in the gutter water was able to get above the waterproofing and pour into the building. The situation was exacerbated because the upstand detail surrounding the drain needed to be increased from 50mm to 150mm.
9. The landlord's surveyor confirmed that the leak is not active. However the walls are solid and will take a considerable time to dry out. Following the water ingress the managing agent instructed a specialist testing company, polygon, to test the areas affected, increased the frequency of gutter clearance and obtained a specification of works from the landlord's surveyor to prevent a reoccurrence of water ingress.
10. The works proposed are to increase the upstand to 150mm; repair the gutters, check and if necessary repair the downpipe, supply and fit lead flashing around the box gutter and cap off the coping stones to the main roof.

### **The Decision**

11. The relevant test to be applied in an application for dispensation was set out by the Supreme Court in *Daejan Investments Ltd v Benson & Ors* [2013] UKSC 14 where it was held that the purpose of the section 20 consultation procedure was to protect tenants from paying for inappropriate works or paying an inappropriate amount. Dispensation should not result in prejudice to the tenant.
12. The Tribunal determines from the evidence before it that the works were necessary, were required to be completed urgently and that no prejudice to the lessees has been demonstrated or asserted.
13. On the evidence before it, and in these circumstances, the Tribunal considers that the application for dispensation be granted.

**Name:** Evelyn Flint

**Date:** 28 May 2019