



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

**Case Reference** : **LON/00BK/LDC/2019/0102**

**Property** : **86-89 Piccadilly, London W1J 7NE**

**Applicant** : **89 Piccadilly Management Limited**

**Representative** : **Samuel Thompson at Burlington Estates**

**Respondents** : **Various leaseholders at the Property, as set out in the attachment to the application**

**Representative** : **N/A**

**Type of Application** : **For the dispensation from the requirements to consult lessees about major works – S20ZA Landlord and Tenant Act 1985**

**Tribunal Members** : **Patrick M J Casey MRICS**

**Date and venue of Hearing** : **Paper determination on 29 August 2019  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **2 September 2019**

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**DECISION**

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## **Decision of the tribunal**

1. The tribunal grants the applicant dispensation from the statutory consultation requirements of S20 of the Landlord and Tenant Act 1985 (“the Act”) in respect of works to be carried out to 86-89 Piccadilly, London W1J 7NE (“the building”) in respect of replacement of a communal cold water supply tank in the roof space above flat 13. The costs to be incurred in respect of the works is said to be in the region of £25,750.00 plus VAT.

## **The background**

2. On 8 April 2019 the landlord’s managing agents, Burlington Estates, received a telephone call from the letting agents for the lessee of flat 13 to say that water was leaking into the bedroom of the flat through the ceiling. Contractors sent to investigate advised that the communal cold water supply tank in the roof space was leaking and making its way into the flat below. They advised that a previous attempt by the then managing agents in late 2018 to reseal the tank had clearly failed and the only sensible way forward was to replace the tank and this needed to be done urgently as the leak was causing significant damage to the flat to such an extent that the tenants vacated. On the advice given to them the directors of the applicant company decided to go ahead with the replacement. On 13 May 2019 a Section 20 Notice of intention to do works was sent to all leaseholders as it was anticipated the cost of the works would qualify them as major works for which statutory consultation would be needed. Two quotations were obtained from different contractors both independent of the landlord by late May but with the leak continuing and flat 13’s lessee looking to claim for loss of rent the decision was made to delay no longer and the contractor who submitted the lower tender, Southern Gas Contractors, was instructed to do the work on 4 June 2019. A lead in time for the delivery of parts had to be factored in but the new tanks had been installed and fully tested by 31 July. It is said in the application that any further delay may have required the leaking tank to be isolated and drained down to prevent further leakage with a consequent effect on the cold water supply to the flats connected to the tank. It is further said that the cost of the works would be met from the reserve fund.
3. Despite obtaining the two tenders no second stage consultation, with Notice of Estimates sent to lessees was undertaken as the contractor was instructed prior to the expiry of the consultation period of the first notice. Burlington Estates were instead instructed to apply to the tribunal for dispensation under S20ZA of the Act.
4. The application was made on 20 June 2019 and Directions in respect of this application were made by the tribunal on 27 June 2019 and

again on 22 July 2019. These provided the leaseholders with an opportunity to agree or oppose the application by completing a form included in the directions to advise their support of or opposition to the application to the tribunal. The Directions also required the applicant to send to each lessee a copy of the application and the directions and to display both documents in the common parts of the building. Burlington Estates confirmed this had been done in an email to the tribunal on 1<sup>st</sup> August 2019.

5. The directions provided for the application to be determined on the papers directed to be submitted to the tribunal unless any of the parties requested an oral hearing; none did and the tribunal considered the application and the supporting documentation on 29 August 2019.
6. In the application the property is described as a purpose built residential block consisting of 16 flats over a ground floor retail shop and office. The lease plan indicates the building is constructed over seven floors. The tribunal did not inspect the property as none of the parties asked for this and it was not considered necessary or proportionate to the issues in the application.
7. Details of the statutory provisions relevant to this application are set out in Appendix 2 to this decision.

### **The tribunal's decision**

8. The leading authority in relation to s.20ZA dispensation requests is *Daejan Investments Ltd v Benson* [2013] 1 WLR 845 (“Benson”) in which the Supreme Court set out guidance as to the approach to be taken by a tribunal when considering such applications. This was to focus on the extent, if any, to which the lessees were prejudiced in either paying for inappropriate works or paying more than would be appropriate, because of the failure of the landlord to comply with the consultation requirements. In his judgement, Lord Neuberger said as follows:
  44. Given the purpose of the Requirements is to ensure that the tenants are protected from (1) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(i) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements.
  44. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the

landlord's failure to comply with the Requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be – ie as if the Requirements had been complied with.

9. None of the leaseholders is opposed to the application nor suggests that the works to be carried out are inappropriate or unnecessary. Nor is there any evidence that the leaseholders will be asked to pay more than is appropriate for the cost of the works.
10. The factual burden of identifying some relevant prejudice is on the leaseholders. They need to show that they have been prejudiced by the failure of the landlord to comply with the statutory consultation procedure. If a credible case of prejudice is established, then the burden is on the landlord to rebut that case.
11. The tribunal is satisfied that no relevant prejudice has been identified. Whilst compliance with the consultation procedure would have enabled the leaseholders to suggest alternative contractors and make observations on quotes received, there is no evidence to suggest that failure to comply with the consultation requirements will lead to the applicant incurring costs in an unreasonable sum, or lead to works being carried out that fall below a reasonable standard. No alternative quotes have been provided that would support such a contention.
12. That these works are urgently required is clear as in the tribunal's experience an actual leak from a storage tank into living accommodation below will usually result in greater damage and more costs unless dealt with expeditiously. There is nothing before the tribunal to suggest dispensation should not be granted and the tribunal is satisfied that it is reasonable to dispense with the non-complied with requirements of the Service Charge (Consultation Requirements)(England) Regulations 2003. Nothing in this decision to grant dispensation should be taken as limiting any leaseholder's rights to challenge a subsequent service charge demand on any grounds save as to compliance with the consultation requirements.

**Name:** P M J Casey

**Date:** 2 September 2019

**APPENDIX 1**  
**RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.

**APPENDIX 2**  
**RELEVANT LEGISLATION**

**Landlord and Tenant Act 1985**

20ZA. Consultation requirements: supplementary

- (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.

**Service Charges (Consultation Requirements) (England) Regulations 2003.**

**Part 2 - consultation requirements for qualifying works for which public notice is not required**

*Notice of intention*

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—
  - (a) to each tenant; and
  - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall—
  - (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
  - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
  - (c) invite the making, in writing, of observations in relation to the proposed works; and
  - (d) specify—

- (i) the address to which such observations may be sent;
  - (ii) that they must be delivered within the relevant period;  
and
  - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

#### *Inspection of description of proposed works*

- 2.** (1) Where a notice under paragraph 1 specifies a place and hours for inspection—
- (a) the place and hours so specified must be reasonable; and
  - (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

#### *Duty to have regard to observations in relation to proposed works*

- 3.** Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

#### *Estimates and response to observations*

- 4.** (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a

recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—
  - (a) from the person who received the most nominations; or
  - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
  - (c) in any other case, from any nominated person.
  
- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—
  - (a) from at least one person nominated by a tenant; and
  - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).
  
- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
  - (a) obtain estimates for the carrying out of the proposed works;
  - (b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—
    - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
    - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and



- (c) make all of the estimates available for inspection.
- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
  - (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
  - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
  - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
  - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
  - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
  - (a) each tenant; and
  - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—

- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

