



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

Case reference : LON/00AY/LDC/2019/0139

Property : 331 Clapham Road, London, SW9 9BS

Applicants : Ashburn Limited

Representative : Bridgeford & Co

Respondents : (1) Miss C O Mbanefo GFF
(2) Mr M Kermer FFF
(3) Mr M D McInerney SFF

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

Tribunal : Tribunal Judge Mohabir
Mr Ridgeway MRICS

Date of decision : 1 October 2019

DECISION

The Tribunal has determined that the Applicant shall be granted dispensation from the statutory consultation requirements in relation to urgent drain repairs wall.

Reasons

1. The Applicant made a section 20ZA application, on 14 August 2019 to dispense with the consultation requirements. The subject properties are a later Victorian brick built house converted into 3 flats constructed over three floors. The building is situated at 331 Clapham Road, London, SW9 9BS
2. Water ingress has caused significant damage to the Flat C. There are large areas of damp to the spare bedroom and kitchen. The guttering is leaking and in need of urgent attention. The flat roof above the rear kitchen

extension needs attention due to cracks and holes. The brickwork needs attention as the pointing is cracked.

3. The total cost of the work has been estimated at £2256.00. Due to the urgent nature of the work, the landlord is not able to consult with the leaseholders under section 20 of the Landlord and Tenant Act 1985.
4. The Tribunal made Directions on 23 August 2019. The Directions required the landlord to send a copy of the application to each of the leaseholders, and to display a copy of the application and the Directions in a prominent position in the common parts of the building.
5. The Directions provided that those leaseholders who opposed the application “shall by 5 pm Friday 13 September 2019 complete the attached reply form and send it to the tribunal”, together with a statement in response setting out the reason for their opposition to the application.
6. The Tribunal has not received any notice of opposition or responses to the application.
7. The Tribunal was provided with a copy of a lease under which the Applicant is obliged to maintain the property and keep it insured and the lessees are obliged to pay a proportionate share of the costs incurred clause 3.
8. In accordance with the Supreme Court’s decision in *Daejan Investments Ltd v Benson* [2013] 1 WLR 854, the primary issue when considering dispensation is whether any lessee would suffer any financial prejudice as a result of the lack of compliance with the full consultation process.
9. The Tribunal is satisfied that the costs of the work will be incurred in circumstances where the landlord was unable to consult with the leaseholders. Given the lack of objections or any proven prejudice to any lessee, the Tribunal is satisfied that it is reasonable to dispense with the statutory consultation requirements.
10. The Tribunal’s decision does not deal with the issue of whether any service charge cost is reasonable or payable. This means that this decision does not affect the right of any leaseholder to seek a determination as to the reasonableness and payability of the service charges in relation to the major works.

Name: Tribunal Judge I Mohabir **Date:** 1 October 2019

S20ZA Consultation requirements

- (1) Where an application is made to a leasehold valuation 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.
- (2) In section 20 and this section—
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
 - (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.
- (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 - (a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
 - (b) to obtain estimates for proposed works or agreements,
 - (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
 - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
 - (a) may make provision generally or only in relation to specific cases, and
 - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.[...] [FN1]

[FN1] ss.20-20ZA substituted for s.20 subject to savings specified in SI 2004/669 art.2(d)(i)-(vi) by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 151

S20A