FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LDC/2019/0108**
Property	**:**	**72 Kings Avenue, London SW4 8BH**
Applicant	**:**	**72 Kings Avenue Limited**
Representative	**:**	**Mohamed Benyermak, Dexters**
Respondents	**:**	**Flat 1: Brooke Hutchinson** **Flat 2: Mr Patrick Edmund Orr** **Flat 3: Mark Crotti** **Flat 4: Ms Zoe Berville** **Flat 5: Irene Bausas** **Flat 6: Ms Lauren Godfrey** **Flat 7: Mr James Dowen**
Representative	**:**	**None**
Type of Application	**:**	**Dispensation with statutory consultation requirements under s.20ZA Landlord & Tenant Act 1985**
Tribunal member(s)	**:**	**Judge N Rushton QC, BA (Law); LLM** **Mr P Roberts DipArch RIBA**
Date and venue of hearing	**:**	**7 October 2019 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**7 October 2019**

DECISION

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Decision of the tribunal

(1) Dispensation is granted pursuant to section 20ZA of the Landlord & Tenant Act 1985.

The application

1. The Applicant is the Residents Management Company ("RMC") in respect of 7 flats at 72 Kings Avenue, London SW4 8BH ("the Property"). The Respondents are the leaseholders. The Applicant's representative is Mr Mohamed Benyermak of Dexters.

2. The Applicant seeks dispensation pursuant to Section 20ZA of the Landlord & Tenant Act 1985 ("the Act") in respect of consultation requirements in relation to certain "Qualifying Works" (within the meaning of the Act).

3. The Qualifying Works comprise the replacement of a sump pump and capacitor and connected works clearing excess waste from the pump pit. The works were carried out on about 20 February 2019.

Paper determination

4. The Application is dated 1 July 2019 and was received by the Tribunal on 2 July 2019. Directions were issued on 9 July 2019 among other things requiring the Applicant to send each of the leaseholders copies of the application form and the directions and to display a copy of the same in a prominent place in the common parts of the Property. By a letter received by the Tribunal on 30 July 2019, Mr Benyermak confirmed this had been done. The Tribunal also served a copy of the application and enclosed documents on all the leaseholders by first class post, sent on 5 July 2019 (copies on the Tribunal's file).

5. The directions provided that any leaseholders who opposed the application for dispensation should respond on the reply form and send a statement in response with any documents relied on by 6 August 2019. No responses and no objections have been submitted by the Respondents.

6. The directions also provided that the Tribunal would determine the application on the basis of written representations unless any request for an oral hearing was received by 16 July 2019. No such request has been received. This application has therefore been determined by the Tribunal on the papers supplied by the Applicant. This included a bundle containing the application, directions and copy lease which the Applicant sent on about 17 September 2019 and which has been received by the Tribunal. That bundle was sent following a grant by the

Tribunal of an extension of time to 27 September 2019, for filing a bundle, failing which the application might be struck out.

7. The directions state expressly that the Application only concerns whether it is reasonable to dispense with the statutory consultation requirements and does not concern the issue of whether any service charge costs resulting from the works are reasonable or payable.

The law

8. Section 20ZA of the Act, subsection (1) provides as follows:

'Where an application is made to a 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.'

9. The Supreme Court in the case of *Daejan Investments v Benson and others* [2013] UKSC 14 set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of section 19 to 20ZA of the Act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate, went on to state *'it seems to me that the issue on which the [tribunal] should focus when entertaining an application by a landlord under section 20ZA(1) 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'*.

Findings of fact

10. The Application gives the following reasons for seeking dispensation: one of the sump pumps had burnt out and failed, and the capacitor was damaged, due to tenants flushing wet wipes down the toilets. Although there was another functioning pump, the RMC received strong advice not to rely only on one pump. A significant amount of work was also required clearing out the pump pit. No s.20 consultation procedure was carried out. The RMC instructed Mr Benyermak to proceed with the work urgently.

11. The cost of the works carried out was stated on the Application to have been £1,780 + VAT to replace the pump and capacitor (installed on 20 February 2019) and £4,356 + VAT for the related work to clear the pump pit.

12. No invoices or quotations for the work have been supplied by the Applicant to the Tribunal. No correspondence or responses from the leaseholders to the Applicant have been provided to the Tribunal. As

stated above, the Tribunal has not received any objections or other responses from the leaseholders.

13. The Tribunal is satisfied on the basis of the statements in the Application, and in the absence of any representations from the leaseholders, that works to replace the sump pump and clear the pump pit are of a nature that would be necessary and urgent, having regard to the likely effect on the flats and leaseholders if the sewage pumps were non-operational.

14. In the absence of any submission from any Respondent objecting to the works, the Tribunal found no evidence that the Respondents would suffer prejudice if dispensation were to be granted.

Determination

15. In the circumstances set out above, the tribunal considers it reasonable to dispense with consultation requirements. Dispensation is granted pursuant to section 20ZA of the Landlord & Tenant Act 1985.

16. This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act as to the reasonableness and standard of the work and/or whether any service charge costs are reasonable and payable.

Name: Judge N Rushton QC **Date: 7 October 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).