



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

**Case reference** : LON/00AY/LDC/2019/0202

**Property** : 6 Abbeville Road,  
London SW4 9NJ

**Applicant** : 6 Abbeville Road RTM Company Ltd

**Representative** : Principia Estate & Asset Management

**Respondents** : Leaseholders of the property as per the  
application

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

**Tribunal** : Judge Nicol  
Mr R Shaw FRICS

**Date of decision** : 27<sup>th</sup> January 2020

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**DECISION**

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The Tribunal has determined that the Applicant shall be granted dispensation from the statutory consultation requirements for works to address dry rot.

**Reasons**

1. The Applicant is the management company for the subject property, the right to manage having been exercised about 2½ years ago. Principia are their managing agents. The Respondents are the lessees of the 7 flats, although 4 of them (the lessees of Flats 1, 2, 4 & 7) are also directors of the RTM company.
2. In November 2018 dry rot was discovered in the basement flat, Flat 1. All the lessees agreed in writing to waive the statutory consultation requirements of section 20 of the Landlord and Tenant Act 1985 and the Service Charges

(Consultation Requirements) (England) Regulations 2003 in order to allow the issue to be addressed urgently.

3. For reasons which are not apparent, the work did not actually start until August 2019, at which point it was found that the dry rot was more extensive than expected and the funds collected to date from the lessees were insufficient to cover the additional work. On this occasion, 2 of the lessees did not respond to the request to waive the consultation requirements and so the Applicant decided to seek dispensation from compliance under section 20ZA of the Act.
4. On or about 12<sup>th</sup> November 2019, the Applicant applied for dispensation. The Tribunal then made directions on 26<sup>th</sup> November 2019. The directions required the Applicant to provide all lessees with their application and the directions and they confirmed they had done so by email dated 3<sup>rd</sup> December 2019.
5. The directions further required any lessee who opposed the application to complete a reply form and send a statement of their case. No lessee responded.
6. The Tribunal was provided with the lease for one of the flats which, it is assumed, is standard. Under the lease, the Applicant is obliged to maintain the property and the lessees are obliged to pay a proportionate share of the costs incurred.
7. 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.
8. There was clearly a significant issue which needed to be addressed. It is telling that none of the lessees have sought to respond to the Tribunal application. As pointed out in paragraph (2) of the directions order, whether the resulting service charges are reasonable or payable is a separate issue from that being considered in this decision.
9. The dry rot was identified over a year ago and its more extensive state over 4 months ago. On that timescale, it is somewhat surprising that Principia have not been able to comply with the statutory requirements by now. If any lessee had challenged the application, this apparent delay would have to have been considered. However, given the lack of objection or any proven prejudice, the Tribunal is satisfied that it is reasonable to dispense with the statutory consultation requirements.

**Name:** NK Nicol

**Date:** 27<sup>th</sup> January 2020