FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AH/LDC/2020/0005**
Property	**:**	**82 Westow Hill London SE19 1 SB**
Applicant	**:**	**Ronan Bennett**
Representative	**:**	**Written Application by MH Associates (Surveyors)**
Respondent	**:**	**3 leaseholders as named in the application**
Representative	**:**	**None.**
Type of application	**:**	**Application for dispensation from consultation requirements under s20ZA of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Mr A Harris LLM FRICS FCIArb**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**3 February 2020**

DECISION

Decisions of the tribunal

(1) The tribunal grants dispensation from the consultation requirements under s20 ZA of the Landlord and Tenant Act 1985 to the extent set out in this decision.

The application

1. The Applicant seeks dispensation from the consultation requirements under s20ZA of the Landlord and Tenant Act 1985.

2. The relevant legal provisions are set out in the Appendix to this decision.

3. The application is concerned solely with the question of what dispensation, if any, should be given from the consultation requirements of s20 of the 1985 Act for works costing in excess of £250 per flat. It is not concerned with the reasonableness or payability of any service charges which may arise.

The hearing

4. A written application was made by MH Associates Chartered Surveyors who have been appointed by the freeholder to supervise works to the property. The case was decided on paper and no appearances were made. The tribunal considered the written application form, copy letters to the leaseholders, a letter from the lessee of flat C, estimates and a specimen lease.

The background

5. The property which is the subject of this application is a four-storey building with commercial premises at the ground floor and basement and three floor of flats above. The tribunal has no jurisdiction over the commercial service charges.

6. The lessee of flat C has provided a detailed diary of events from January 2019 to date. Complaints of dampness were made in January 2019. Roofing contractors were instructed to investigate and provide estimates. No s20 consultation was carried out at that time. Repair work was due to start in August 2019 when problems were found to be more extensive than anticipated. In September 2019 MH Associates were instructed to advise. Timber decay was reported at some stage, but the date is not altogether clear from the papers but in November 2019 a dry rot specialist opened up parts of the building to determine the extent of an outbreak. Some temporary support work was needed to

stairs leading to the top floor. A s20 first stage notice was sent on 28 November 2019.

7. Estimates have been provided by Strand Preservations Ltd in the total sum of £5735 plus VAT and by Hardy Construction for £4250.

8. Strand Preservations appear to be a specialist firm who can provide an insurance backed guarantee. Hardy Construction appears to be a small firm describing themselves as General Builders and specialists in structural repairs. They are not VAT registered.

9. It is not clear from the papers which contractor is to be employed.

10. There is currently no detailed specification of works and no estimates for the totality of the works before the tribunal.

11. A specimen lease has been provided. A list of leaseholders has been provided with confirmation from the agents that they have been notified of the proposed works. The applicant states that no representations have been received objecting to the application as to the scope of the works or appropriateness of the application but in the light of the letters from Mr Elkerton of flat C this is clearly not correct.

12. Mr Elkerton seeks a ruling that the dispensation is restricted to the current works and is not retrospective to early 2019 when works were first contemplated.

13. The scope of the works appears fall within the landlords repairing covenants of the lease and the cost is recoverable under the service charge provisions, subject to any challenge under s27A of the Landlord and Tenant Act 1985.

The tribunal's decision

14. The tribunal grants dispensation from the consultation requirements of under s20 ZA of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 for the work to investigate and carry out remedial action in respect of the dry rot outbreak only.

15. Dispensation is not given in respect of works to the roof or other remedial works as there is currently no specification and no estimate of the likely cost.

16. Dispensation is not given retrospectively for earlier abortive works during the first part of 2019.

Reasons for the tribunal's decision

17. The primary guidance on whether to give dispensation comes from the decision of the Supreme Court in Daejan v Benson which lays the down that the primary test is that of prejudice to the leaseholders. Here the scope of any works is not identified and there is no indication of cost. The disrepair described in the papers appears to come from neglect of the building and the dry rot may be a consequence of a failure to carry out timely repairs despite being requested to do so. The tribunal considers that the failure to identify the full scope of works at this stage is prejudicial to the leaseholders hence the limited scope of the dispensation given.

18. The tribunal is satisfied that in the circumstances, the dry rot works are necessary as a matter of urgency and for the safety and convenience of the residents, grants dispensation.

Name: A Harris LLM FRICS FCIArb **Date: 3 February 2020**

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).

Appendix of relevant legislation

S20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.[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

S20ZA Consultation requirements: supplementary

(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