



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

**Case reference** : **LON/00AW/LDC/2020/0029**

**Property** : **42 Lennox Gardens, London SW1X 0DF**

**Applicant** : **The Wellcome Trust Limited**

**Representative** : **Savills (UK) Ltd**

**Respondent** : **Leaseholders of 42 Lennox Gardens**

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

**Tribunal member(s)** : **Judge Sheftel**

**Date and venue of Paper Determination** : **12 March 2020 at 10 Alfred Place, London WC1E 7LR**

**Date of decision** : **12 March 2020**

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**DECISION**

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**Decision of the tribunal**

- (1) The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works detailed at paragraph 9 below.**
- (2) In granting dispensation in respect of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

## **The application**

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the 1985 Act) from the consultation requirements required by Section 20 of the 1985 Act.
2. The application was dated 29 January 2020. Directions were issued on 6 February 2020. These provided that the Tribunal will determine the application on the basis of written representations, unless any party makes a request for an oral hearing by 17 February 2020.
3. The Applicant's representatives confirmed to the Tribunal that they served copies of the application and Directions on the Respondents by hand on 13 February 2020 and posted copies of both in the common parts of the property as required by paragraph 2 of the Directions – albeit the Applicant's confirmation was received by the Tribunal on 5 March 2020, rather than 17 February 2020 as required by the Directions.
4. No requests have been received for an oral hearing and the application is therefore determined on the papers received.
5. The only issue for the Tribunal is if it is reasonable to dispense with any statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

## **The law**

6. The relevant section of the 1985 Act reads as follows:

“20ZA Consultation requirements

(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.”

7. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson* [2013] UKSC 14. In summary the Supreme Court noted the following:
  - The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice

to the tenants flowing from the landlord's breach of the consultation requirements.

- The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
- Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
- The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
- The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
- The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

### **Background**

8. The property is a converted building comprising 6 flats.
9. The application form seeks dispensation in respect of works required to erect and strike scaffolding to make repairs to dislodged guttering to the rear of the property totalling £6,974.40 including VAT. In addition, the Applicant's statement notes that further works were required to repair broken roof slates, which was first observed as the scaffolding erected to repair the guttering was being struck. According to the

statement and estimates contained in the bundle, the additional cost to extend the scaffolding was £1,400 including VAT and the cost to replace the roof slates was £1,389.60 including VAT.

10. The Applicant's statement provides that the issue arose following reports of a leak into flat 1. A notice of intention to carry out roof repair works was served on the Respondents on 14 January 2020 and leaseholders were also notified that the Applicant would be applying to the tribunal for dispensation.
11. Contractors (N-Compass) were instructed to attend and their report noted that the loose guttering was causing the leak and that it could not be accessed safely without scaffolding.
12. Scaffolding was then erected on 16 January 2020 and the repairs to the guttering were carried out.
13. According to the Applicant's statement, the Applicant's representatives were notified shortly thereafter of water ingress to flat 3 from around a window which could only be accessed by scaffolding. However, the contractors were able to extend the scaffolding to rectify this issue. Further, on 17 February 2020 while the scaffolding was being struck, it was observed that there was an area of broken roof slates on the roof. It was considered more cost effective to extend the scaffolding to replace the roof slates rather than this issue causing problems in the future, which would require the erection of new scaffolding.
14. The Applicant seeks dispensation "*of all of the consultation requirements because repair works were urgent and required immediate attention to mitigate damage*".

### **Decision**

15. On the facts of the present case, the Tribunal notes, in particular, that:
  - (1) the works to replace the defective guttering were required as a matter of urgency and it was deemed more cost effective to carry out the works to the roof at the same time;
  - (2) none of the Respondents has objected to the application; and
  - (3) no evidence has been submitted identifying the type of prejudice referred to in paragraph 7 above.
16. In the circumstances, it is considered that it is reasonable to dispense with the consultation requirements for the works. Accordingly, the Tribunal grants dispensation from the consultation requirements of

S.20 of the 1985 Act in respect of the works set out at paragraph 9 above.

17. For the avoidance of doubt, in granting dispensation in respect of the application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

**Name:** Judge Sheftel

**Date:** 12 March 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).