FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AJ/LDC/2020/0009**
HMCTS code (paper, video, audio)	**:**	**P**
Property	**:**	**47 Churchfield Road, Acton, London W3 6AY**
Applicant	**:**	**Southern Land Securities Ltd**
Representative	**:**	**Together Property Management Ltd**
Respondents	**:**	**Ian Baker & Susannah Toman-Baker (Flat 1)** **Mario Becchetti & E Fabarius (Flat 2)** **Mr Waseem Walayat (Flat 3)** **Alastair Kerr (Flat 4)**
Type of application	**:**	**Dispensation from statutory consultation requirements**
Tribunal	**:**	**Judge Nicol**
Date of decision	**:**	**5th August 2020**

DECISION

The Tribunal grants the Applicant dispensation from the consultation requirements in relation to the works to the ground floor roof at 47 Churchfield Road, Acton, London W3 6AY and there is no order as to costs.

Reasons

1. This application for dispensation from statutory consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 has been determined on the papers. A face to face hearing was not held because the Tribunal directed that the case was suitable for the paper track and the parties did not object. The documents that the Tribunal was referred to are in two bundles, one from the Applicant of 99 pages

and one from the Respondents of 31 pages, the contents of which have been recorded where appropriate below.

2. The Applicant is the freeholder of the subject property, a converted 4-storey terraced house with commercial premises on the ground and basement levels and 4 flats on the lower ground, ground, first and second floors. Their agents are Together Property Management ("TPM"). The Respondents are the lessees of the 4 flats. The tenant of the commercial premises, Claire Mathewson, also participated but the Tribunal's jurisdiction in this matter is limited to residential premises.

3. On 16th December 2019 TPM received a report that water was leaking into the ground floor shop from the flat roof above. They appointed a roofing contractor, Darran Hall Roofing, to attend the same day and they quoted for works costing £3,875. Another contractor, KBK, had quoted for work to the same roof the year before at a cost of £4,560 plus VAT and they confirmed by email dated 16th December 2019 that they were prepared to do the work now required for the same price.

4. TPM emailed the lessees the following day, 17th December 2019:

> We are writing to make you aware that there is a serious leak going into the commercial unit at the front of the property. Contractors have attended and regretfully the news is not good.
>
> Behind the front shop sign there is a small balcony, that has been determined is a communal area, that has promenade tiles laid on top of a felt roof. This has now degraded due to wear and tear and has come to the end of its life. Regretfully, no temporary repairs can be undertaken that will be successful in the short term and therefore we are going to need to undertake the works now as an emergency.
>
> We have obtained two quotes, please see attached, and as Darran Hall Roofing has provided the lower quote (they are also not VAT registered), they have been instructed to proceed with their quote now. Due to the cost of the quotes we would normally be required to enter into consultation with you prior to works starting as required under Section 20 of the Landlord and Tenant Act 1985 … However, due to the urgent nature of the works and to prevent any further damage being caused to the shop, so mitigating any further losses, we will organise the works now and make an application to the First Tier Tribunal for dispensation of the necessity of having to serve Notice's in this instance.

5. The works were apparently completed by Darran Hall Roofing for the quoted price although the papers before the Tribunal had surprisingly little to confirm this. The Tribunal has also not seen the resulting service charge demands but it is implied that the lessees have been asked to pay their share of this cost which exceeds £250 per lessee. The Tribunal was provided with a sample lease, that of Flat 2, and it obliges the Applicant in the usual way to repair and maintain the property while the lessees pay a share of the resulting costs.

6. TPM were correct that any such works are subject to consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003. The Applicant has applied to the Tribunal for dispensation from those requirements under section 20ZA of the Act. Without that dispensation, they would be limited to recovering only £250 from any affected lessee.

7. Under section 20ZA(1) of the Act, the Tribunal may dispense with the statutory consultation requirements if satisfied that it is reasonable to do so. The Supreme Court provided further guidance in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854:

   (a) Sections 19 to 20ZA of the Act are directed to ensuring that lessees of flats are not required to pay for unnecessary services or services which are provided to a defective standard or to pay more than they should for services which are necessary and provided to an acceptable standard. [42] (It is arguable that the statutory consultation requirements arising from section 20 were aimed at more than just addressing the costs referred to in sections 18 and 19 and that it is absurd to suggest that lessees' interests, particularly where their property is also their home, do not go beyond the cost to them, but the Supreme Court thought otherwise.)

   (b) On that basis, the Tribunal should focus on the extent to which lessees were prejudiced by any failure of the landlord to comply with the consultation requirements. [44]

   (c) Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation requirements, an unconditional dispensation should normally be granted. [45]

   (d) Dispensation should not be refused just because a landlord has breached the consultation requirements. Adherence to the requirements is a means to an end, not an end in itself, and the dispensing jurisdiction is not a punitive or exemplary exercise. The requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by and what amount is to be paid for them. [46]

   (e) The financial consequences to a landlord of not granting dispensation and the nature of the landlord are not relevant. [51]

   (f) Sections 20 and 20ZA were not included for the purpose of transparency or accountability. [52]

   (g) Whether or not to grant dispensation is not a binary choice as dispensation may be granted on terms. [54, 58, 59]

   (h) The only prejudice of which a lessee may legitimately complain is that which they would not have suffered if the requirements had been fully complied with but which they would suffer if unconditional dispensation were granted. [65]

(i) Although the legal burden of establishing that dispensation should be granted is on the landlord, there is a factual burden on the lessees to show that prejudice has been incurred. [67]

(j) Given that the landlord has failed to comply with statutory requirements, the Tribunal should be sympathetic to the lessees. If the lessees raise a credible claim of prejudice, the Tribunal should look to the landlord to rebut it. Any reasonable costs incurred by the lessees in investigating this should be paid by the landlord as a condition of dispensation. [68]

(k) The lessees' complaint will normally be that they have not had the opportunity to make representations about the works proposed by the landlord, in which case the lessees should identify what they would have said if they had had the opportunity. [69]

8. The Respondents indicated to the Tribunal that they objected to the grant of dispensation and they appointed one of their number, Mr Becchetti, to write on their behalf. It is clear from the documents submitted that the Respondents do not like TPM's management generally as a number of other issues were brought up in the extensive email correspondence.

9. In this particular case, Mr Becchetti pointed to the fact that the shop roof had similarly leaked the year before and works had not gone ahead. TPM say the shop tenant had insisted that works be put off to January 2019 so as not to disrupt the Christmas trade and that they heard nothing thereafter, whether to arrange works or due to reports of leaking. Indeed, there were no reports of any water ingress into the shop for the 11 months until the report on 16th December 2019.

10. Mr Becchetti says that TPM failed to make the shop tenant aware of an alternative by which the works could have been completed quickly, within 4 days, which might have addressed the concern about disruption to trade. He also says TPM should not have waited to hear back from the shop tenant but should have been more proactive. Either the works would have been done earlier in December 2018 or, alternatively, there would have been plenty of time to carry out the consultation process during 2019 rather than waiting for another emergency to arise.

11. Unfortunately, there is a number of problems with Mr Becchetti's approach. As the Supreme Court decided, it is not a matter of whether TPM could have carried out consultation but whether any prejudice was suffered because they did not. Mr Becchetti's submissions imply that the Respondents would not have raised an objection to the lack of consultation if the works had been carried out in December 2018.

12. Mr Becchetti points to the fact that works were scheduled to another roof, to the rear of the property, at around the time water ingress was first reported in late 2018. However, the two parts of the property appear to be entirely separate, being on opposite sides of a long terrace and there is no evidence that there would have been any savings in having the front

roof dealt with at the same time. For example, the works could not have shared any scaffolding.

13. Mr Becchetti suggests the Respondents suffered prejudice because emergency works always cost 10% more than works which are properly tendered during consultation. While this sounds plausible, no evidence has been presented to support it. The Tribunal is not aware of any general rule or practice to this effect and there is nothing to indicate that the chosen contractor charged any more than they normally would have done due to the urgent nature of their instructions.

14. While the Tribunal accepts that there is evidence that TPM could have conducted themselves differently, perhaps in a way more acceptable to the Respondents, there is no evidence that the extent, quality and cost of the works were affected by the Applicant's failure to comply with the consultation requirements. It might be argued that the shop tenant had to put up with a leaking roof for longer but that is irrelevant to this application as the Respondents did not incur financial prejudice as a result.

15. The Respondents sought orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that they should not have to pay the Applicant's costs of the proceedings through service or administration charges. The Tribunal sees no basis for making such orders in the circumstances of this case and refuses to do so.

Name: Judge Nicol **Date:** 5th August 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).