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PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AH/LDC/2020/0148**
Property	**:**	**284 Brigstock Road Thornton Heath Surrey CR7 7JE**
Applicant	**:**	**Southern Land Securites**
Representatives	**:**	**Together Property Management**
Respondents	**:**	**The three leaseholders of the ground floor commercial premises and the two flats listed in the application.**
Type of Application	**:**	**Application for the dispensation of consultation requirements pursuant to S. 20ZA of the Landlord and Tenant Act 1985**

Tribunal Members	**:**	**Mr Duncan Jagger MRICS**
Venue of Determination	**:**	**10 Alfred Place, LondonWC1E 7LR by Video conference**
Date of Determination and Decision	**:**	**24 November 2020**

DECISION

Decisions of the Tribunal

(1) The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act).

(2) The reasons for the Tribunal's decision are set out below.

The background to the application

1. The property, **284 Brigstock Road Thornton Heath Surrey CR7 7JE,** comprises a three storey detached Victorian building with commercial premises on the ground floor and two flats above.

2. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.

3. This has been a paper hearing which has been consented to by the party. The documents that were referred to are in a bundle of 19 pages, the contents of which we have recorded Therefore, the tribunal had before it an electronic/digital trial bundle of documents prepared by the applicant, in accordance with previous directions.

4. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act, (see the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987), Schedule 4.) The request for retrospective dispensation concerns urgent remedial works to erect scaffolding and effective emergency roof repairs. The application is said to be urgent, as the works were necessary to stop water ingress into the second floor flat. The water ingress was making the flat damp and could cause potential damage to the electrical system which would a safety hazard.

5. Section 20ZA relates to consultation requirements and provides as follows:

> *"(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.

....

(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. The Directions on 7 October 2020 required any tenants who opposed the application to make their objections known on the reply form produced with the Directions.As far as the Tribunal is aware no objections were received from either of the three tenants.

7. In essence, the works mentioned above are required to ensure that there is a stop to water ingress into the affected second floor flat caused by the defective rear dormer roof and associated flashings.The water ingress was making the affected flat damp and could lead to potential mould and possible problems with the electrical sysyem. Dispensation was thought necessary to speed up the remedial works.

The decision

8. By Directions of the tribunal dated 7 October 2020 it was decided that the application be determined without a hearing or by way of a video hearing if no objection was made. There being no such objection the case will be determined on written representations.

9. The tribunal had before it a bundle of documents prepared by the applicant that contained the application, grounds for making the application including two quotations from contractors to undertake remedial works to the rear dormer roof causing the water ingress together with a specimen copy lease and copy Tribunal Directions.

10. **The issues**

11. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether or not service charges will be reasonable or payable.**

12. Having read the evidence and submissions from the Applicant and having considered all of the documents and grounds for making the application provided by the applicant, the Tribunal determines the dispensation issues as follows.

13. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.

14. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by such an application as is this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.

15. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14, by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.

16. The Supreme Court came to the following conclusions:

    a. The correct legal test on an application to the Tribunal for dispensation is:

       "Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord's failure to comply with the requirements?"

    b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.

    c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord's failure to comply.

    d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.

e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

f. The onus is on the leaseholders to establish:

i. what steps they would have taken had the breach not happened and

ii. in what way their rights under (b) above have been prejudiced as a consequence.

16. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the lessor/applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.

17. The tribunal is of the view that, taking into account that there were no objecting leaseholders, it could not find prejudice to any of the leaseholders of the property by the granting of dispensation relating to the roof repair works set out in the documentation in the trial bundle submitted in support of the application.

18. The Tribunal was mindful of the fact that the works were undertaken by the applicant supported by managing agents and with two proper estimates and that therefore dispensation is wholly appropriate.

19. The applicant believes that roof repair works were vital given the nature of the problems reported. The applicant also says that in effect the tenants of the properties have not suffered any prejudice by the failure to consult. On the evidence before it the Tribunal agrees with this conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application. It must be the case that the necessary roof repair works should have been carried out as a matter of urgency to ensure the safety and integrity of the building and the well-being of the leaseholder in the affected flat and hence the decision of the Tribunal.

20. Rights of appeal made available to parties to this dispute are set out in an Annex to this decision.

21. The applicant shall be responsible for formally serving a copy of the tribunal's decision on all leaseholders. Furthermore, the applicant shall place a copy of the tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. Copies must also be placed in a prominent place in the common parts of the block. In this way, leaseholders who have not returned the reply

form may view the tribunal's eventual decision on dispensation and their appeal rights.

Name: Mr D Jagger MRICS **Date:** 25 November 2020

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.