



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

**Case reference** : **LON/00AW/LDC/2020/0247**

**HMCTS Code** : **P:Paper remote**

**Property** : **91 Cadogan Gardens, London, SW3 2RE**

**Applicant** : **91 Cadogan Gardens RTM Company Ltd**

**Representative** : **Pastor Real Estate Ltd**

**Respondents** : **The four leaseholders listed in the application**

**Representative** : **In person**

**Type of application** : **For dispensation under section 20ZA of the Landlord & Tenant Act 1985**

**Tribunal member** : **Tribunal Judge I Mohabir  
Mrs J Mann MCIEH**

**Date of determination** : **22 March 2021**

**Date of decision** : **22 March 2021**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers, which has been consented to by the Applicant and not objected to by the Respondents. The form of remote hearing was P: PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and no one requested the same.

### ***Introduction***

1. The Applicant makes an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for dispensation from the consultation requirements imposed by section 20 of the Act.
2. 91 Cadogan Gardens, London, SW3 2RE (“the property”) is a 5 story Victorian building that has been converted into 4 leasehold flats.
3. On or about October 2020 the Applicant became aware of water ingress into Flat 4. Following an inspection on 5 October 2020 it was discovered that there were 3 leaks resulting in water ingress into the flat. The causes of the leaks were described in the inspection report as *“the lead detail around the rear dormer roof was inadequate. When the roof pools with water, the water is rising under the lead detail and ingressing into the roof structure causing large leaks across internal beam. The lead around the rear skylight is not fixed, causing lifting of the lead when high winds causing water ingress around skylight frame. The front elevation box gutters are blocked and also, other leaks are visible within the flat 4, however access to these box gutters is only available via scaffold (inspection was not possible). Front elevation windows, there is water ingress around box frames caused by poor decorative state of windows and no sealant visible around frames. We also identified pointing missing around chimney and parapet wall, which may be contributing to leaks.”*
4. The Applicant proposed to carry out the following remedial works at an estimated cost of £5,424 in December 2020 prior to shut down of construction sector ahead of festive period:  
  
To inspect box gutters and carry out works on the main roof.  
Carry out lead works on dormer roof and around skylight.  
Carry out pointing works to chimney and parapet wall.  
Install mastic around windows to prevent water ingress around box frames.
5. On 8 December 2020, the Applicant served a Notice of Intention of the leaseholders and indicated to them that it was going to make an application to the Tribunal for dispensation given the urgent nature of the proposed works.
6. Subsequently, the Applicant made this application seeking dispensation from the requirement to carry statutory consultation in relation to the

urgent works. The works to prevent any further water ingress were completed following the application being lodged.

7. The reason for the urgency in the proposed works was for the benefit of the leaseholder of the top floor flat and that of the wider building to prevent further water ingress penetrating into any subsequent properties and to diminish potentially larger repair costs if consultation was carried out.
8. In addition, recent occurrences of rainfall during increase of Autumnal inclement weather have progressively worsened the situation for the directly affected leaseholder for whom it is their primary residence for their children and with current restrictions working from home due to COVID19. Water ingress is severely affecting the mental wellbeing of the leaseholders children and should it be allowed to continue will lead to potential respiratory issues with black spot mould beginning to show signs of growth.
9. On 11 January 2021, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. The Tribunal also directed that this application be determined on the basis of written representations only.
10. None of the Respondents have objected to the application.

### ***Relevant Law***

11. This is set out in the Appendix annexed hereto.

### ***Decision***

12. The determination of the application took place on 22 March 2021 without an oral hearing. It was based solely on the statements of case and other documentary evidence filed by the Applicant.
13. The relevant test to be applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.
14. The issue before the Tribunal was whether dispensation, retrospectively or otherwise, should be granted in relation to requirement to carry out statutory consultation with the leaseholders regarding the works to prevent further water ingress. As stated earlier, the Tribunal is not concerned about the actual cost that has been incurred.
15. The Tribunal granted the application the following reasons:

- (a) the Tribunal was satisfied that the water ingress into Flat 4 was significant and posed a health and safety hazard to the occupiers and were, therefore urgent in nature. This was confirmed in the inspection report dated 5 October 2020 prepared by BBK Maintenance Limited.
  - (b) the Tribunal was satisfied that the Respondents were informed of the leak and water ingress in a timely manner and the need to carry out remedial repairs. The Tribunal was also satisfied that if the Applicant carried out statutory consultation, it is likely that the health and safety of the occupants of Flat 4 would be prejudiced and, potentially, the cost of the remedial work could have increased.
  - (c) the Tribunal was satisfied that the Respondents have been served with the application and the evidence in support and there has been no objection from any of them.
  - (d) importantly, the real prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred and they have done so by making the parallel service charge application under section 27A of the Act. It is in that application that any arguments in relation to historic neglect may be pursued by the Respondents.
16. The Tribunal, therefore, concluded that the Respondents were not be prejudiced by the Applicant's failure to consult and the application was granted as sought.
17. It should be noted that in granting this part of the application, the Tribunal makes no finding that the scope and estimated cost of the repairs are reasonable.

**Name:** Tribunal Judge I  
Mohabir

**Date:** 22 March 2021

### **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**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 20**

- (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) the appropriate 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.

**Section 20ZA**

(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.