



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

**Case reference** : **LON/00AW/LDC/2021/0154**

**Property** : **20 Coleherne Road, London, SW10 9BW**

**Applicant** : **20 Coleherne Road Residents Company Ltd**

**Representative** : **TLC Estate Agents**

**Respondent** : **(1) Mr Neil Thackery (Bst Flat 1)  
(2) Mr Kristian Nikinmaa (Flat 2)  
(3) Mr Michael Browning (Flat 3)  
(4) Ms Monique McElroy (Flat 4)  
(5) Mr Kieron Murphy (Flat 5)**

**Representative** : **No participant**

**Type of application** : **Application for dispensation from  
consultation requirements s20ZA  
Landlord and Tenant Act 1985**

**Tribunal member(s)** : **Mr Richard Waterhouse MA LLM  
FRICS**

**Date and venue of hearing** : **29<sup>th</sup> September 2021 Remote Hearing  
on Papers**

**Date of decision** : **29<sup>th</sup> September 2021**

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**DECISION**

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## **Determination**

1. The tribunal grants dispensation from the consultation requirements of section 20 Landlord and Tenant Act 1985 in respect of the parapet gutter and outflow in order to prevent ingress of water and subsequent damage to flats 4 and 5 and prevent compromise of safety of electrics.
2. In granting dispensation in respect of the works, the tribunal makes no determination as to whether any service charge costs are reasonable or payable.

## **The Application**

3. The applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for dispensation from the requirements in section 20 of the Act to consult in advance of qualifying works.

## **Directions**

4. The applicant made the application which is dated 9<sup>th</sup> April 2021 . Directions were given on 16<sup>th</sup> June 2021, including for the applicant to notify leaseholders by post and by displaying a copy in communal areas of the application and the directions. A subsequent letter from Judge N Carr on the 10<sup>th</sup> August sought confirmation that the leaseholders had been notified. The applicant subsequently confirmed to the tribunal by e mail letter dated 10<sup>th</sup> August 2021 17:40 it had done so, and no that responses had been received from the leaseholders.
5. Leaseholders had until 13<sup>th</sup> July 2021 to file with the tribunal a notice of opposition. No leaseholders have responded and therefore the bundle of documents provided by the applicant is the material on which this determination is based.
6. The tribunal directed that the determination be made on paper unless either party requested a hearing. No such request has been made.

## **The Facts**

7. The property is a townhouse converted into five flats.
8. The applicant seeks urgent dispensation on grounds of that bedrooms in each of Flats 4 and 3 are unusable due to ingress of water. Damage is occurring to the electrics of Flat 4. The Applicant believes there is a risk of long term /extensive damage to the fabric of the building as well

as the residents safety. The application seeks dispensation to carry out works to the parapet gutter to prevent these issues.

### **The Law**

9. Section 20ZA of the Act states that the tribunal may determine that there should be dispensation from the consultation requirements set out in section 20 of the Act in respect of any qualifying works or qualifying long term agreement when “it is satisfied it is reasonable to do so”.
10. In *Daejan Investments Ltd v Benson* [2013] UKSC 14, the Supreme Court set out following factors to be taken into account:
  - a) 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.
  - b) 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.
  - c) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - d) The tribunal has power to grant a dispensation as it thinks fit, including on terms, provided that any terms are appropriate.
  - e) The tribunal has power to impose a condition that the landlord pays the tenant’s reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlords application under 20ZA (1)
  - f) 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.
  - g) 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.
  - h) 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.
  - i) Once the tenants had shown a credible case for prejudice, the tribunal should look to the landlord to rebut it.

### **The Decision**

11. No leaseholder has objected or made any other representations in this case. Therefore, there is no assertion of prejudice.

12. In the circumstances I consider it reasonable, in the light of the facts , to dispense with the section 20 Notice requirements.
13. Accordingly, I grant dispensation pursuant to section 20ZA for the works in para 8 above.
14. In granting dispensation, I make no determination of whether any service charge costs are reasonable or payable.

**Name:** Tribunal Judge Waterhouse      **Date:** 29<sup>th</sup> September 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).

