



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

Case Reference : **LON/00AG/LDC/2022/0003**

HMCTS Code : **P: PAPER REMOTE**

Property : **145 Abbey Road, London, NW6 5SS**

Applicant : **145 Abbey Road Freehold Limited**

Respondent : **A Marks, B Cornes, S Lipman and
Starlevel Properties Ltd**

Type of Application : **Dispensation from consultation
requirements under Landlord and
Tenant Act 1985 section 20ZA**

Tribunal Members : **Judge Professor R Percival
Ms S Redmond BSC (Econ) MRICS**

Venue : **Remote paper determination**

Date of Decision : **7 March 2022**

DECISION

Decisions of the tribunal

- (1) The Tribunal, pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”), grants dispensation from the consultation requirements in respect of the works the subject of the application.

Procedural

1. The landlord submitted an application for dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 (“the 1985 Act”) and the regulations thereunder, dated 17 December 2021.
2. The Applicant indicates on the form that the works have been commenced or completed. The form also indicates that the application involves a qualifying long term agreement, but the Tribunal assumes from the papers available that that was in error.
3. The Tribunal gave directions on 13 January 2022. The directions provided for a form to be distributed to those who pay the service charge to allow them to object to or agree with the applications, and, if objecting, to provide such further material as they sought to rely on. The application and directions was required to be sent to the leaseholders and any sublessees, and to be displayed as a notice in the common parts of the property. The deadline for return of the forms, to the Applicant and the Tribunal, was 20 February.
4. The Applicant has explained that its directors are Ms Marks and Ms Cornes, who are the leaseholders of two of the flats, and Mr Lahoud, who represents Starlevel Properties, the lessee of a third. Ms Cornes only is resident. The leaseholder of the fourth flat is Mr Lipman, who lets it through an agent. Correspondence with the agent indicated her agreement that the works are urgent. The Applicant expressly confirms that neither Mr Lipman nor Starlevel Properties has indicated an intention to oppose dispensation. It is evident, of course, that the two natural person director/leaseholders do not oppose the application.
5. It is not apparent to the Tribunal that the form and notices were served on those to whom the non-resident leaseholders had let their flats, the resident sublessees, as required by the directions.

The property and the works

6. The property is a semi-detached Victorian house converted into four flats.
7. The relevant works arise in the context of a larger programme of maintenance and repair. The Applicant states that some parts of the programme are not urgent, and can be the subject of a full consultation process under section 20 of the 1985 Act. The parts of the programme relevant to this application, however, are urgent.
8. This conclusion is drawn from a survey report undertaken by Daniel Connall Partnership, a firm of building surveyors. The survey identifies the following matters as urgent, posing a direct risk to health and safety:
 - (i) There is a large hole in the roof that is leading to damp penetration occurring internally;
 - (ii) The roof is coming to the end of its useful life and there are many instances of loose and slipped slates;
 - (iii) The sand/cement render to the chimneys and party walls is loose and friable. Chunks of render could fall from a high level, injuring (potentially fatally) passerby;
 - (iv) There are sections of loose render to the external facades, again which may fall, resulting in serious injury and/or fatality;
 - (v) The ceilings in the common parts appear loose and off key and are in danger of collapsing; and
 - (vi) Fire precautions are inadequate and need to be addressed urgently.

Determination

9. The Tribunal is concerned solely with an application under section 20ZA of the 1985 Act to dispense with the consultation requirements under section 20 of the same Act.
10. In the first place, we accept that there is a substantial degree of urgency in undertaking the works. We consider, therefore, that it is appropriate to dispense with the consultation requirements for this reason alone.

11. Secondly, no responses have been received from any of the leaseholders. It is therefore clear that no leaseholder has sought to claim any prejudice as a result of the consultation requirements not having been satisfied. Where that is the case, the Tribunal must, quite apart from any question of urgency, allow the application: *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854.
12. We note above that it appears that the residential sublessees have not been invited to oppose the application, as they should have been. However, in the first place, we consider that the urgency of the repairs is such that we should in any event order dispensation. Secondly, it is not clear to us that opposition from sublessees, even if they could demonstrate prejudice, would suffice to satisfy the requirement for a leaseholder to demonstrate prejudice before we should consider (in the first place) dispensation on terms, as set out in *Daejan*,
13. This application relates solely to the granting of dispensation. If the leaseholders consider the cost of the works to be excessive or the quality of the workmanship poor, or if costs sought to be recovered through the service charge are otherwise not reasonably incurred, then it is open to them to apply to the Tribunal for a determination of those issues under section 27A of the Landlord and Tenant Act 1985.

Name: Judge Prof Richard Percival **Date:** 7 March 2022

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, 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.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
 - (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.
- (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) Regulations under section 20 or this section—
 - (a) may make provision generally or only in relation to specific cases, and
 - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.