



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

**Case Reference:** LON/00BF/LDC/2023/0012 P

**HMCTS code:** P: PAPERREMOTE

**Property:** 1-52 Willow Court Willow Road  
Wallington SM6 0PF

**Applicant:** Willow Court Management (Wallington)  
Limited

**Representative :** PMD Block Management Ltd

**Respondents:** The leaseholders of the flats listed in the  
schedule to the application

**Type of  
Application:** To dispense with the statutory  
consultation requirements under  
section 20ZA Landlord and Tenant Act  
1985

**Tribunal  
members:** Judge Pittaway  
Mrs M Krisko FRICS

**Date of decision:** 14 March 2023

## DECISION

### 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 any Respondent. Mr Hafez of Flat 29 initially indicated that he required an oral hearing but he confirmed on 16 February 2023 that he was content with a paper determination. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper.

The documents to which the Tribunal was referred in a bundle of 77 pages which included the application dated 3 January 2023, the Directions dated 3 February 2023, a statement by Mr C Ross, the managing director of PMD Block Management Limited ('PMD'), a copy of the lease of Flat 48 and the objection of Mr A Hafez of Flat 29 to the works.

The Tribunal has had regard to the documents before it in reaching its decision set out below.

## DECISION

**The Tribunal grants the application for retrospective dispensation from statutory consultation in respect of the subject works ('the works'), namely the repair of the flat roof above Flats 1-36.**

**This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of liability to pay, for a reason other than non-consultation in respect of the subject works, and the reasonableness and/or the cost of the subject works.**

### The Application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (the 'Act') for dispensation from consultation in respect of the works to the Property.

2. The applicant seeks dispensation from the consultation requirements to stop water ingress to flats on the top floor of the building. Flats 29 and 33 are specifically referred to in the application.
3. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if it is planned to carry out qualifying works which would result in the contribution of any tenant being more than £250.
4. The application gave the cost of the works at £14,364 and stated that the cost of the works was to be met from existing reserves. It also stated that the lessees had been informed of the need for the works and that dispensation would be sought from the tribunal given the urgent nature of the works.
5. By directions dated 3 February 2023 (the '**directions**') the Tribunal directed that the Applicant by 10 February 2023 send each leaseholder and any residential sublessees the application and the directions and display a copy in a prominent place in the common parts of the property and confirm to the Tribunal that this had been done by 17 February. The Applicant confirmed on 10 February 2023 that the application had been sent by post to 50 of the leaseholders on 7 February 2023, by e mail (at their request) to the other two leaseholders on 8 February 2023 and copies of the directions posted on 3 notice boards within the development on 9 February 2023.
6. The directions provided that if any leaseholder/sublessee objected to the application he/she should do so, to the Applicant and the Tribunal, by 24 February 2023. The Tribunal received an objection from Mr Hafez on 16 February 2023 and the bundle before the tribunal contained a reply form sent by him to Mr Ross of PMD dated 6 February 2023.
7. The directions provided that the Tribunal would decide the matter on the basis of written representations unless any party requested a hearing. Mr Hafez initially requested an oral hearing but confirmed on 16 February that the matter could be dealt with on the basis of written representations.

### **The Applicant's case**

8. The application describes the property as a purpose-built block of 52 flats with a flat roof. Mr Ross' statement clarifies that there are two sections of flat roof; one above flats 1-36 and another above flats 37-52.
9. Mr Ross' statement sets out that the roof above flats 1-36 was renewed in 2011 by an IKO approved contractor Survey Roofing Limited (**SRL**) using the felt manufacturer's (**IKO PLC**) specification. At that time the Applicant employed

Graham Bishop Chartered Surveyors (**GB**) to provide and agree the specification for the roof, and supervise the works generally. A 20 year guarantee for the works was issued in January 2011, split into two parts, the materials guaranteed by IKO and the workmanship by SRL.

10. Mr Ross' statement sets out the chronology of events that occurred prior to making the application. Reports of water ingress started in August 2022. With the involvement of GB IKO were contacted in relation to the guarantee, which in turn tried to contact SRL.
11. By November 2022 GB reported that the matter had become more pressing due to water ingress to flats 33, 35 and 36. In the absence of any response from SRL GB contacted London & Southern Roofing, a subsidiary of WillTech Building Contracts who had done work to the property previously. Mr Ross determined that SRL was dissolved in September 2018. By December GB determined that there was also a leak into Flat 29.
12. As there appeared to be no recourse under the guarantee an initial quote was obtained from WillTech on 24 December 2022 of £11,970 (plus VAT) for work above flats 29 and 33. It was considered that it would be necessary to apply for a dispensation from the consultation arrangements. The scope of the necessary works changed in January 2023 resulting in a revised quote from WillTech of £17,100 plus VAT.
13. Given the growing number of leaks and urgency of repairs it was decided to proceed with London & Southern Roofing rather than obtaining further quotes and undertaking the formal consultation process as it was able to start quickly, WillTech had previously undertaken good work at the property and it was felt that it was necessary to make the property watertight as soon as possible. The Directors of the Applicant were advised of the situation on 12 January 2023.
14. GB inspected the property on 27 January 2023 and considered the repairs to be satisfactory.

### **Responses from the Respondents**

15. By e mail to the tribunal Mr Hafez objected to the dispensation on the ground that there had been a delay in obtaining the quote, that the quote had increased from £14,364 to £20,500 causing him financial prejudice and that the matter was not urgent as there had been a leak for years.

### **Determination and Reasons**

16. Section 20ZA(1) of the Act provides:

*“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.”*

17. The purpose of section 20ZA is to permit dispensation with the consultation requirements of section 20 of the Act if the Tribunal is satisfied that it is reasonable for them to be dispensed with.

18. The Tribunal determines that the Respondents are not prejudiced by the works and it is reasonable to dispense with the consultation requirements.

19. In reaching its decision the Tribunal has considered the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14, and has had regard to the application and the documents provided, in particular

- the evidence of the consultation which the Applicant has undertaken with the Respondents,
- whether any objection has been received from any Respondent, and
- the stated need for the works.

20. The Tribunal note that Mr Hafez objected to the dispensation from consultation, however on the evidence before it the Tribunal finds that the leak became more serious after November 2022 so that repair was required urgently. It also finds that the reason that the Applicant had not obtained a quote before December 2022 was its belief that it might be able to have the works carried out under the guarantee. The increase in the cost of the work was due to the Applicant ascertaining that more work than initially anticipated was required. The Tribunal is not able to take Mr Hafez personal circumstances into account when determining prejudice to any Respondent.

21. Whether or not the Respondents are liable for the cost of the works by reason of the terms of their leases, any statutory provision other than section 20ZA, and whether the works are carried out to a reasonable standard and at a reasonable cost are not matters which fall within the jurisdiction of the Tribunal in relation to this present application. This decision does not affect the Tribunal’s jurisdiction upon any future application to make a determination under section 27A of the Act in respect of liability to pay and the reasonableness and /or cost of the works.

22. The Applicant is reminded that, as stated in the Directions, it is the responsibility of the Applicant to serve a copy of this decision on all Respondents.

Name:

Judge Pittaway

Date: 14 March 2023

### **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.