



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

Case reference : **LON/00AW/LDC/2022/0247**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **5 Egerton Gardens, London, SW3 2BP**

Applicant : **5 Egerton Gardens Limited**

Representative : **Richard Birchall Associates**

Respondent : **1. Mr & Mrs O Williams
2. Mr & Mrs J Norling
3. Mr M R Stolkin
4. Chirico Pty Limited (Mr S Higgs)
5. Mr S Kutner Managen
6. Mr D J Reilly**

Representative : **Not represented**

Type of application : **Application for dispensation from the
consultation requirements of s20 under
section 20ZA of the Landlord and
Tenant Act 1985**

Tribunal members : **Mr A Harris LLM FRICS FCI Arb**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **21 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 parties. The form of remote hearing was P:PAPERREMOTE,. A face-to-face hearing was not held because no-one requested the same, and all issues could be determined on paper. The documents that I was referred to are in a bundle of 128 pages, the contents of which I have noted. The order made is described at the end of these reasons..

Decisions of the tribunal

1. The tribunal exercises its discretion to grant dispensation from the consultation requirements of s20ZA in respect of the works required to renew a leaking roof covering and add thermal insulation.

The application

2. The Applicant seeks dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) in respect of works required to renew the roof covering and add thermal insulation
3. Directions were made on 18 January 2023 for a paper determination in the week commencing 20 March 2023. The only issue for the tribunal is whether it is reasonable to dispense with the statutory consultation requirements.
4. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

The hearing

5. A written application was made by Richard Birchall FRICS MCIOB, a building surveyor instructed by the managing agents of the property to oversee the works. The case was decided on paper and no appearances were made. The tribunal considered the written application form, copy letters to the leaseholders, estimates and a specimen lease included in the bundle. The total cost of the works for which dispensation is sought was £36,575.00 plus VAT.

The background

6. The property is a mid-terrace house circa 1890 of solid, loadbearing red brick construction on lower ground, raised ground and four upper floors below the main flat roof with tiled front slope. The original house

has been converted into six self-contained flats, sold on long lease, with each leaseholder having a share of the freehold company 5 Egerton Gardens Limited. Each lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

7. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues.
8. A specimen lease has been provided showing the scope of the works is within the service charge provisions of the lease. A list of leaseholders has been provided with confirmation from the agents that they have been notified of the proposed works. No representations have been received objecting to the application as to the scope of the works or appropriateness of the application.

The tribunal's decision

9. The tribunal exercises its discretion to grant dispensation from the consultation requirements of under s20 ZA of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003

Reasons for the tribunal's decision

10. The works are required due to leaks into the top floor flat. Previous repairs were made about 10 years ago and the guarantee is no longer available. The works will carry a 20 year insurance backed guarantee. Dispensation from the consultation requirements of section 20 was requested.
11. The tribunal is satisfied that the leaseholders are aware of the works required and none have objected.
12. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs. (1) 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*” (emphasis added).
13. The Tribunal understands that the purposes of the consultation requirements is to ensure that leaseholders are given the fullest possible opportunity to make observations about expenditure of money for which they will in part be liable. The test laid down by the Supreme Court in *Daejan v Benson* is whether the leaseholders would suffer

prejudice if the application were to be granted and a full consultation not carried out.

14. The tribunal considers that there is no prejudice to the leaseholders in granting dispensation as the works are urgently needed to make the building watertight and leaseholders have been consulted and have agreed to the works.
15. The tribunal is satisfied the works are urgent and that dispensation should be granted

Name: A Harris

Date: 21 March 2023

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).