



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

Case Reference : **LON/00AG/LDC/2023/0005**

Property : **Flats 1-12A, 19 Frognal, NW3 6AR**

Applicant : **19 Frognal Limited, represented by
Warwick Estates**

Respondents : **Long leaseholders of Flats 1-12A, 19
Frognal, as per attached Schedule**

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

Tribunal Members : **Judge Professor R Percival
Ms M Krisko FRICS**

Venue : **Remote paper determination**

Date of Decision : **27 March 2023**

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 22 December 2022.
2. The Tribunal gave directions on 18 January 2023, which were amended on 22 February 2023, at the request of the Applicant, as it had failed to email five of the leaseholders as required by the directions. 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 application, 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 originally 10 February 2023, amended to 1 March 2023.
3. The Applicant confirmed that the relevant documentation had been sent to the leaseholders on 24 January 2023, but that clearly excluded the five leaseholders that were missed. Those leaseholders were emailed on 20 February 2023. There was no confirmation that the relevant materials had been displayed in the common parts, as required by the directions.
4. No response from any of the leaseholders has been received by the Tribunal. The Applicant originally confirmed that no responses had been received by it on 14 February 2023, but that was before the missed leaseholders were emailed, and accordingly before the deadline for responses had elapsed.
5. As will be seen, the Applicants failed to properly adhere to the directions. However, we are prepared to accept that, in the end, all of the leaseholders were served by email, and that the failure to display the materials in the communal area does not invalidate the requirements to serve, such as to lead us to decline to allow dispensation. Further, given that the Tribunal itself has not received any objections from the leaseholders before the date of this decisions, we are prepared to accept that there have been none. If that is wrong, a leaseholder may apply to the Tribunal for this decision to be set aside.

The property and the works

6. No description of the property is given in the application form, other than that it comprises 13 residential flats. Google street view indicates that it is a large brick built pre-war semi-detached building.
7. The works are briefly described in the application form. It appears that the works are to repair a defective gutter and downpipe, an operation that requires scaffolding. The repairs are necessary as the defective state of the pipework is causing water ingress.
8. The Applicant has received a quotation of £4,596, including VAT, for the works, from a company called London Flood Prevention.
9. The application form records that the leaseholders are “to be notified” of the costs by email.
10. The application form unhelpfully fills in the question “explain why you seek dispensation...” with “Works exceed section 20 threshold”. Obviously, the fact that works exceed the threshold, and therefore the consultation requirements are effective, is never itself a reason for dispensation. However, we assume from the nature of the defects being addressed that there is some urgency involved to prevent continued water ingress, which must be impacting on both the physical condition of the interior of the building and on the amenity of the occupiers.

Determination

11. The relevant statutory provisions are sections 20 and 20ZA of the Landlord and Tenant Act 1983, and the Service Charges (Consultation etc)(England) Regulations 2003. They may be consulted at the following URLs respectively:
<https://www.legislation.gov.uk/ukpga/1985/70>
<https://www.legislation.gov.uk/uksi/2003/1987/contents/made>
12. The Tribunal is concerned solely with an application under section 20ZA of the 1985 Act to dispense with the consultation requirements under section 20 and the regulations.
13. We accept, given the description of the works, that there was some urgency in carrying out the works, and that the inevitably delay that would have been occasioned by a full consultation process would not have been in the interests of the leaseholders, or, if relevant, their sub-tenants. We have not been told if the works have been carried out yet, although they had not been at the date of the application.

14. Further, in the circumstances described above, we are prepared to accept that no response been received from any of the leaseholders objecting to the application. It is therefore clear that the leaseholders have not 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.
15. 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.
16. We add that, where a landlord has engaged the services of a reputable managing agent, as in this case, it would be helpful if the agent could fill in the application form properly, and properly adhere to the Tribunal's directions.

Rights of appeal

17. 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 London regional office.
18. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
19. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
20. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Judge Prof Richard Percival **Date:** 27 March 2023