



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

Case reference : **LON/00AN/LDC/2023/0044**

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

Property : **4 Chesilton Road London SW6 5AB**

Applicant : **Orchardbase Ltd**

Representative : **Michael Richards & Co**

Respondents : **3 Leaseholders set out in the application**

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 member : **Mr A Harris LLM FRICS FCI Arb**

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

Date of decision : **11 May 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 52 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 repair a leaking roof.

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 repair the roof covering.
3. Directions were made on 15 March 2023 for a paper determination in the week commencing 5 May 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 Michael Richards & Co the managing agents of the property. 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 £850 plus VAT. As there are only three flats this takes it over the consultation threshold of £250 per flat.

The background

6. The property is a mid-terrace house circa 1880 over basement, ground and three upper floors of typical construction. having a roof with pitched and flat sections behind a rendered parapet. The original house

has been converted into three self-contained flats. sold on long lease. 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 roof 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 were required to remedy a leaking roof in December 2022 as a matter of urgency as water damage was occurring. Dispensation from the consultation requirements of section 20 was requested. The works have been completed.
11. The tribunal is satisfied that the leaseholders were 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 were 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 were urgent and that dispensation should be granted

Name: A Harris

Date: 11 May 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).