FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AN/LDC/2022/0251**
Property	**:**	**4 Seddlescombe Road, Fulham London, SW6 1RD**
Applicant	**:**	**Southern Land Securities Limited**
Representative	**:**	**Ms Laura Cody, Together Property Management**
Respondents	**:**	**Mrs Slight Mr & Mrs Batten and Long Residential Leaseholders in 4 Seddlescombe Road, Fulham, London, SW6 1RD**
Representative	**:**	**N/A**
Type of application	**:**	**For dispensation under section 20ZA of the Landlord & Tenant Act 1985**
Tribunal member	**:**	**Tribunal Judge I Mohabir**
Date of decision	**:**	**9 May 2023**

DECISION

Introduction

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the Act") for *retrospective* dispensation with the consultation requirements in respect of remedial works required to prevent water ingress to the First Floor Flat in 4 Seddlescombe Road, Fulham, London, SW6 1RD ("the property").

2. The Applicant is the freeholder of the property and the Respondents are the long leaseholders.

3. On or about 27 June 2022, the Applicant's managing agent, Together Property Management ("TPM"), was contacted by the leaseholders of the property concerning water ingress to the flat. TPM obtained an estimate from Hamilton Roofing on 19 August 2022 for the cost of the remedial work. A second estimate was obtained from R Koca Limited on 10 October 2022.

4. On or about 27 October 2022, the leaseholders in the property informed TPM that the repair works were urgently required. On 11 October 2022, TPM commenced statutory consultation with the Respondents pursuant to section 20 of the Act by serving a Notice of Intention to carry out the proposed repairs.

5. On 16 November 2022, TPM served a Notice of Estimates on the Respondents providing details of the two estimates obtained. TPM proposed that the lower estimate provided by Hamilton Roofing be adopted with a total cost in the sum of £4,224 including VAT and administration fees.

6. On 9 November 2022, the Applicant made this application for dispensation from the requirement to complete the statutory consultation process because of the urgent nature of the repair works.

7. However, on 5 December 2022 TPM were informed by the leaseholders of the property that the water ingress has become worse. Therefore, it was decided to commence the repairs without waiting for a determination by the Tribunal of the application. The Respondents were advised of this.

8. Whilst on site the contractor informed TPM that the original scope of the repair works would have to be enhanced to include rendering work to the party wall and the coping stones, which could be carried out whilst the scaffolding was in place. By a letter dated 12 January 2023, the Respondents were made aware of this.

9. On 18 January 2023, the Tribunal issued Directions. The Respondents were directed to respond to the application stating whether they objected to it in any way.

10. None of the Respondents have objected to the application.

Relevant Law

11. This is set out in the Appendix annexed hereto.

Decision

12. As directed, the Tribunal's determination "on the papers" took place on 9 May 2023 and was based solely on the documentary evidence filed by the Applicant. As stated earlier, no objections had been received from any of the Respondents nor had they filed any evidence.

13. The relevant test to the applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.

14. The issue before the Tribunal was whether dispensation should be granted in relation to the requirement to carry out statutory consultation with the leaseholders regarding the fire compartmentation works. As stated in the directions order, the Tribunal is not concerned about the actual cost that has been incurred.

15. The Tribunal granted the application for the following reasons:

    (a) the Tribunal was satisfied that the nature of the works were urgent and had to be undertaken by the Applicant sooner rather than later for the benefit of the leaseholders of the property.

    (b) The Tribunal was also satisfied that if the Applicant carried out statutory consultation, it is likely that the health and safety of the leaseholders in the property would have been further prejudiced. It is also possible that any further delay would have also resulted in the estimated cost of the remedial works increasing because of the fabric of the building deteriorating.

    (c) the Tribunal was satisfied that the Respondents have been kept informed of the need, scope and estimated cost of the proposed works.

    (d) the Tribunal was satisfied that the Respondents have been served with the application and the evidence in support and there has been no objection from any of them.

(e) importantly, the real prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred by making a separate service charge application under section 27A of the Act.

15. The Tribunal, therefore, concluded that the Respondents were not being prejudiced by the Applicant's failure to consult and the application was granted as sought.

16. It should be noted that in granting this part of the application, the Tribunal makes no finding that the scope and estimated cost of the repairs are reasonable.

Name: Tribunal Judge I Mohabir **Date:** 9 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).

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.