



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

Case reference : **LON/00AY/LDC/2023/0239**

**HMCTS Code
(Paper, video,
audio)** : **P: PAPERREMOTE**

Applicant : **Mayor & Burgesses of the London
Borough of Lambeth**

Respondents : **Leaseholders of 19-25 Britannia Close,
London, SW4 7NN**

Property : **19-25 Britannia Close, London, SW4
7NN**

Type of application : **Application for dispensation to consult
– section 20ZA of the Landlord and
Tenant Act 1985**

Tribunal members : **Judge Tueje
Mr S Mason FRICS**

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

Date of hearing : **18th December 2023**

Date of decision : **9th January 2024**

DECISION

In this determination, statutory references relate to the Landlord and Tenant Act 1985 unless otherwise stated.

Decision of the Tribunal

- (1) The tribunal grants dispensation pursuant to s.20ZA in respect of works to repair the roof at 19 – 25 Britannia Close, London, SW4 7NN, carried out by Fahey Roofing Limited at a cost of £17,727.20 excluding VAT.

The application

1. This application, dated 5th April 2023, is made pursuant to section 20ZA, by which the Applicant seeks unconditional dispensation for part of the consultation requirements in respect of the works required to remedy a defective roof at the property situated at 19 – 25 Britannia Close, London, SW4 7NN (the “Property”).

Background

2. The Applicant is a local authority. It owns the freehold of the Property, which is a 3-storey purpose-built block of 7 flats consisting of mixed tenures, which include two dwellings let pursuant to long leases. The leaseholders are Mr John Dominic Maffei and Ms Joanna Asiaw, who are leaseholders of 21 and 25 Britannia Close respectively (the “leaseholders”).
3. On around 9th September 2022 the Respondent received notice of a leak to the roof and consequent rainwater penetration affecting 25 Britannia Close. It subsequently obtained the following estimates to carry out repairs:
 - 3.1 Fahey Roofing Limited dated 28th November 2022, repairs estimated at £17,727.20 excluding VAT;
 - 3.2 T. D Construction Consultants Limited dated 1st December 2022, repairs estimated at £20,000 excluding VAT; and
 - 3.3 Norwood Scaffolding and Roofing Limited dated 2nd December 2022, repairs estimated at £20,000 excluding VAT.
4. On 21st December 2022, and in accordance with section 20, and part 2 of Schedule 4 of The Service Charges (Consultation Requirements) (England) 2003 regulations (the “2003 Regulations”), the Applicant sent the leaseholders Notices of Intention to do works. It invited the leaseholders to respond with any observations and/or nominated contractors no later than 27th January 2023. The Applicant states it received no observations regarding the works, nor were any contractors nominated.
5. A Justification Report for Emergency/Urgent works dated 14th March 2023, prepared by Mr Jason Welch, the Applicant’s Community Works, concluded that temporary roof repairs were not appropriate because scaffolding would be needed to carry out any repairs in accordance with health and safety requirements. Mr Welch also concluded that due to rainwater ingress, urgent repairs were required. He considered this justified works being carried out before completing the second stage of the section 20 consultation requirements. He decided the works should be carried out by Fahey Roofing Limited which had provided the lowest estimate.
6. Therefore, on 15th March 2023 the Applicant wrote to the long leaseholders providing a statement of the estimated cost of works from

the proposed contractors, notifying leaseholders it intended to award the contract to Fahey Roofing Limited, and invited leaseholders to provide any observations regarding the proposed agreement no later than 18th April 2023.

7. The letters to leaseholders dated 15th March 2023 enclosed a statement setting out their estimated contribution to the cost of these works including the management fee: the estimated contribution in respect of 21 Britannia Close was £3,939.65; and £2,713.16 in respect of 25 Britannia Close.
8. Neither the Applicant or the Tribunal has received any objections to the Application.

The hearing

9. The Application was determined on the papers by the Tribunal on 18th December 2023. In making its decision, the Tribunal took into account the information provided by the Applicant by way of an indexed paginated bundle comprising 84 pages containing the following documents:
 - 9.1 The application for dispensation;
 - 9.2 The Applicant's submissions;
 - 9.3 A schedule of leaseholders;
 - 9.4 Estimates obtained in respect of the proposed works;
 - 9.5 Notices of Intention sent to leaseholders;
 - 9.6 A Justification Report for Emergency/Urgent works dated 14th March 2023;
 - 9.7 A statement of estimates obtained;
 - 9.8 A sample lease; and
 - 9.9 The Tribunal's directions order 1st November 2023.

The Legal Framework

10. So far as is relevant, section 20 states:
 - (1) *Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsections (6) or (7) (or both) unless the consultation have been either-*
 - (a) *Complied with in relation to the works or agreement, or*
 - (b) *Except in the case of works to which section 20D applies, 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 payment of service charges) to relevant costs incurred on carrying out the works under the agreement.*

(3) *This section applies to qualifying works if relevant costs incurred or on carrying out the works exceed an appropriate amount.*

11. Section 20ZA(1) continues:

Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

12. In ***Daejan Investments Limited v Benson and others [2013] UKSC 14*** the Supreme Court provided the following guidance when dealing with section 20ZA applications for dispensation of the statutory consultation requirements:

12.1 The purpose of sections 19 to 20ZA is to ensure leaseholders are not required to pay any more than is necessary for services provided, and that they are not required to pay for unnecessary or unsatisfactory services.

12.2 The Tribunal is to focus on the extent to which leaseholders have been prejudiced by a landlord's failure to comply with the requirements under section 20.

12.3 Ordinarily, where the failure to comply with section 20 had not affected the extent, quality and costs of the works carried out, dispensation is more likely to be granted.

12.4 The Tribunal's main focus on such applications is what prejudice, if any, have leaseholders suffered.

12.5 The leaseholders bear a factual burden of identifying some relevant prejudice that they would or might suffer.

12.6 Where leaseholders make a credible case regarding prejudice, the landlord bears the legal burden to rebut this.

12.7 If appropriate, the Tribunal may grant conditional dispensation.

The Tribunal's Decision

13. The tribunal grants dispensation pursuant to s.20ZA in respect of works to repair the roof at 19 – 25 Britannia Close, London, SW4 7NN, carried out by Fahey Roofing Limited at a cost of £17,727.20 excluding VAT.

The Tribunal's Reasons

14. The Tribunal has had regard to the nature of the works and finds the works were necessary to prevent rainwater penetration in to 25

Britannia Close. The Tribunal takes into account that leaseholders were given an opportunity to nominate contractors and make observations regarding these works, but there were no nominations, objections or any other observations from leaseholders.

15. The Tribunal is satisfied that the cost of the works were no more than is necessary because the Applicant appointed the contractor who provided the lowest estimate. The Tribunal understands that the leaseholders have no observations regarding the cost of the works.
16. To the extent it was practical to do so, the Applicant complied with consultation requirements. In the Applicant's Justification Report for Emergency/Urgent works dated 14th March 2023, Mr Welch explained the reasons why it did not comply with all of the section 20 requirements (see paragraph 5 above).
16. There is no evidence before the Tribunal indicating that the Applicant's failure to comply with the section 20 requirements has affected the extent, quality and cost of the works carried out.
17. By paragraph 2 of the directions order, the leaseholders were afforded an opportunity to object to this application; they have not done so. Therefore, the Tribunal proceeds on the basis that the leaseholders have no objections to the application, and that there has been no relevant prejudice to leaseholders, who are likely to have objected to the application if there had been any prejudice.
18. We are satisfied that works were required to the Property being the repairs as outlined above to prevent internal damage. In the circumstances, we are satisfied that it is reasonable to grant dispensation from the consultation requirements. We have borne in mind the Supreme Court decision in *Daejan Investments Limited v Benson and others [2013] UKSC 14*. There is no evidence of any prejudice caused to the leaseholders and indeed none have raised an objection to the application. Dispensation is therefore granted from the consultation requirements. We should make it clear that we are not making any findings as to the reasonableness, the cost, or the standard of the work.

Name: Judge Tueje

Date: 9th January 2024

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).