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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/LDC/2023/0194**
HMCTS code	**:**	**V: CVPREMOTE**
Property	**:**	**19 Nassington Road, London, NW3 2TX**
Applicant	**:**	**19 Nassington Road (London) Freehold Limited**
Representative	**:**	**Judith Schulman – Director of the Applicant**
Respondents	**:**	**1) Susan West** **2) Jennie Howarth & Jeremy Howe** **3) Matthew Zienau & Varina Zienau** **4) Judith Schulman**
Representative	**:**	**Susan West – in person** **1st-3rd Respondents – non-attendance**
Type of application	**:**	**To dispense with the statutory consultation requirements under section 20ZA Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Sarah McKeown**
Date and Venue of hearing	**:**	**19 January 2023 at** **10 Alfred Place, London, WC1E 7LR**
Date of decision	**:**	**19 January 2024**

DECISION

DECISION

The Tribunal grants the application for unconditional retrospective dispensation from statutory consultation in respect of the subject works, namely roof repairs following a leak, which were carried out between 16 December 2021 and 3 January 2022.

The Applicant should place a copy of this decision together with an explanation of the leaseholder's appeal rights on its website (if any) within seven days of receipt and maintain it there for at least three months, with a sufficiently prominent link to both on its home page. It should also display copies in a prominent place in the common parts of the Property.

This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonableness and/or cost of the work. This decision is, however, to be read in conjunction with the decision of the same date in LON/00AG/LSC/2023/0330.

References are to page numbers in the bundles provided for the hearing. The Applicant's bundles are LB1 and LB2, the Respondents bundle is referred to as (R).

The Application – LB1 p.17

1. 19 Nassington Road, London, NW3 2TX ("the Property"), is a five-storey property which has been converted to create four flats. In 2017, 19 Nassington Road (London) Freehold Limited ('the Applicant") acquired the freehold interest. The Freehold company is owned by three of the four lessees:

   (i) Garden Flat: On 11 July 2023, Ms. Alice Gailes acquired the leasehold interest from Jennie Howarth and Jeremy Howe. She is a shareholder and resides in her flat.
   (ii) Ground Floor: Ms. Susan West (the Fourth Respondent) is the leaseholder. She is a shareholder and resides in her flat.
   (iii) First Floor: Ms. Judith Schulman has been the leaseholder since 2010. She resides in her flat and is a shareholder. She is the landlord's active director and has represented the landlord in these proceedings.
   (iv) Top Floor Maisonette: Mr. Matthew Zienau and Ms. Varina Zienau are the leaseholders. They are brother and sister. They do not occupy their flat. They are not shareholders.

2. The cost of the works was £2,450. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if the landlord plans to carry out qualifying works which would result in the contribution of any tenant being more than £250. All the leaseholders (at the material time), except Ms. West ("the Fourth Respondent"), have paid this charge. Mr. Howarth and Ms. Howe paid this charge before they transferred their interest; Ms. Gailes therefore has no interest in this application. On 11 August 2023 (LB2 p.171), the Tribunal gave Directions. On 20 August, Ms. Schulman confirmed that the Freehold company had sent a copy of the application and directions to the Leaseholders. On 31 August, the Fourth Respondent filed a statement opposing this application.

3. By the order of dated 11 August 2023 (LB2 p.171) the Tribunal identified that the only issue for the Tribunal was whether it was reasonable to dispense with the statutory consultation requirements. It was made clear that the application (that made by the Applicant in the above case number) did not concern the issue of whether any service charge costs would be reasonable or payable, or the possible application or effect of the Building Safety Act 2022.

4. The order provided, among other things:

   (a) The Applicant had to send to the leaseholders copies of the application form, a brief statement to explain the reasons for the application (if not already contained in the application and these directions and display a copy of those documents in a prominent place in the common parts;
   (b) Applicant's reply to the statements in opposition.

5. The directions provided that the application would be dealt with on the papers unless a request for a hearing was received. Such a request was made by the Fourth Respondent (LB1 p.31).

6. On 28 July 2023, the Fourth Respondent applied for a determination under s.27A of the Landlord and Tenant Act 1985 as to whether service charges were payable. That application has proceeded under reference number LON/00AG/LSC/2023/0330. By order of 21 November 2023 (LB2 p.186) the Tribunal ordered, among other things, that that application and this application should be heard together. They have been heard together and the Tribunal has issued a decision of the same date in respect of that application.

The Lease – LB1 p.92

7. It is not disputed that the Fourth Respondent holds her interest in the Ground Floor Flat on the same terms as a Lease dated 21 June 1990 between Craig Properties Limited and Ms. Chapman. The following are the material terms:

The Sixth Schedule sets out the Lessor's covenants, which include:

1 Subject to the payment by the Lessee of the rent The Maintenance Charge and the Interim Maintenance Charge herein mentioned and provided that the Lessee has complied with all the covenants agreements and obligations on his part to be performed and observed to keep in good repair and decoration and (so far as the Lessors may from time to time in their reasonable discretion consider necessary) to renew and amend the following parts of the Property (but subject to the exclusion set out below)

(a) The structure of the Property INCLUDING without prejudice to the generality of the foregoing:
  (i) The roofs and foundations
  ...
(b) The Conduits in under and upon the Property not exclusively serving the Demised Premises or Other Demised Parts of the Property...
(c) The Common Parts
(d) ...
(e) All other parts of the Property not included in the foregoing sub-Paragraphs (a) (b) (c) and (d) hereof

...

5 To pay and discharge any rates... taxes duties assessments charges impositions an outgoings assessed charged and imposed upon the Property as distinct from any assessment made in respect of the Demised Premises or Other Demised Parts of the Property

The Eighth Schedule provides that it is the intention of the parties "that the Lessors shall have the power to incur such costs and expenses if they consider the same are necessary or desirable in the general interests of the Lessees or occupiers of the Property or in the interests of good estate management:

(1) The reasonable costs and expenses properly incurred by the Lessors in relation to any matter referred to in Part I of the Sixth Schedule.
(2) The cost of any additional insurance affected in connection with the property or any part therof

...

The Background

8. Ms. Zienau ("Varina"), one of the leaseholders of the top floor flat, emailed the other Leaseholders and the Freeholder on 5 October 2021 (LB1 p.41) and stated that the roof was leaking.

9. EC1 Construction (George Overill) provided a quote (LB1 p.46) on 30 November 2021 for repairs works and scaffolding, in the sum of £2,450 (having attended on 27 October 2021 – LB1 p.67 – but needing to return when the weather was dry).

10. On 2 December 2021 (LB1 p.47) Ms. Howarth (who was a leaseholder at the time – see above) emailed the Fourth Respondent stating that she was putting a copy of the quote for the roof repairs through her door, that EC1 Construction had been recommended and stating that work had been held up by access to the top floor flat. The Applicant was asked to let Ms. Howarth (and Ms. Schulman – the two directors of the Applicant company at the time) know if she agreed to the work going ahead.

11. This was chased on 3 December 2021 (LB1 p.48). On the same day (LB1 p.49) Ms. Howarth sent an email, essentially endorsing EC1 Construction in doing the work and Ms. Schulman confirmed that she was comfortable to proceed with EC1 Construction "before the roof deteriorates further". The Fourth Respondent did respond on 3 December 2023 (p.32(R)) with a hyper-link.

12. The Fourth Respondent responded on 5 December 2021 (LB1 p.49) taking issue with the identity of the contractor, stating that the quote looked "quite expensive" and stating that she had been in contact with "Crown" (a company that was working next door) and the email, essentially, suggests that they carry out the work (and it is said that there was no reason why the top floor flat should not be able to grant access the following day). She states "[W]e must get at least one more independent quote".

13. Ms. Schulman responded on the same day (LB1 p.50). Among other things, the email addresses a concern raised by the Fourth Respondent about a conviction, and states "we had, as far as we knew, received your comments, and acted on them, we decided that we should now order the work, and we actually did so before receiving your message". It is said that they needed to do so "as quickly as possible to safeguard the fabric of the building from further deterioration" and it goes on to say that "the most important thing is that the work is done to a good standard and at a reasonable cost".

14. On 6 December 2021, the Fourth Respondent emailed the directors of the Applicant company maintaining her objection to EC1 Construction carrying out the works but stating that she understood that "arrangements have already been made in engaging George Overill for the works". She also stated that s.20 consultation had not taken place and that in "the case of a genuine emergency we would need to apply to the First Tier Tribunal to seek a dispensation" (LB1 p.80).

15. On 8 December 2021, a quote from Crown was received (LB1 p.52), which was for £6,100.

16. On 11 December 2021 the two quotes were sent to the Fourth Respondent. It was said that the directors of the Applicant company proposed using EC1 Construction as they were "half the cost and they are recommended by a builder whose work we trust, against Crown whose work we don't know and will charge us well over double". It goes on to state: "we will go through the Section 20 process if required, it does seem like a long and drawn out process while the roof will only deteriorate as the winter takes a hol [sic]". She was asked to let them know her thoughts "asap". attached (LB1 p.81).

17. This was chased on 13 Dec 2021 (LB1 p.82).

18. The Fourth Respondent did respond on 14 December 2023 (LB1 p.54) stating that the two quotes were not "like-for-like" and that Crown would remove moss, clear the gutters and replace damaged roof tiles. They provided a seven-year guarantee. The Fourth Respondent replied on the same day, stating that they had asked EC1 Construction to address her concerns, and they had done to, satisfactorily. It was said that EC1 Construction would clear the gutters, remove any moss, replace broken tiles and gave a 10-year guarantee.

19. EC1 Construction was commissioned to carry out the repairs on 15 December 2021 and works were commenced the following day (the Fourth Respondent was put on notice of LB1 p.55). The cost of the works was the same as set out in the quote, i.e. £2,450.

20. The Fourth Respondent wrote a letter on 27 June 2023, among other things, asking for a refund her of share of the cost of the works on the basis her "request for a Section 20 was refused and my serious concerns about the chosen contractor were ignored" and no check was not on whether firm held valid indemnity insurance.

21. On 30 May 2022, the Fourth Respondent emailed the freeholder (LB1 p.56) stating that when the scaffolding was removed, her trellis fence was damaged. In that email she states that she does not expect all of the cost of a replacement to be met as the trellis was not new and would need to be replaced eventually (probably in a couple of years). The email stated "[c]learly, the damage can't be charged to the house" and it was suggested the scaffolding company should bear the cost.

22. On 10 June 2022 Ms. Schulman emailed the Fourth Respondent stating that she would provide the Fourth Applicant with contact details for the scaffolders. On the same day, Ms. Schulman emailed Ms. Schulman and Ms. Howarth (p.43(R)) stating, among other things, that she had flagged her concerns about the choice of contractor, and it was for the Respondent to investigate. It was said that the contractors need to make a claim on their insurance if they were not prepared to make a payment from company funds).

23. On 11 June 2022 (LB1 p.57) Ms. Schulman emailed the Fourth Respondent stating that it was for her to look into compensation from the scaffolding company.

24. By letter of 27 June 2023 (LB1 p.58) the Fourth Respondent, among other things, stated that the Respondent owed her £4,624 and that she had been awarded £2,774.40 (less £350 policy excess) through her insurance claim. She also raised the issue of the s.20 consultation (or lack thereof) and the damage to the trellis.

25. The Applicant replied on 21 July 2023 (LB1 p.60), addressing the issues raised by the Fourth Respondent.

Documentation

26. The Applicant Landlord has provided a bundle of documents, split into two – LB1 and LB2, comprising a total of 169 pages. The Respondent has provided a bundle comprising 160 pages (the Tribunal has had regard to both bundles in respect of both applications).

The Applicant's case

27. In its Statement of Case (LB1 p.3), the Applicant states that it commissioned work from George Overill (trading as EC1) to repair the roof and that the cost of the works was the same as the quote obtained (£2,450). The Fourth Respondent tenant asked for a refund of her share of the costs (£628.50), on the basis that a s.20 consultation had not been carried.

28. The Applicant raises several points in support of its application:

(i) The matter was urgent;
(ii) An alternative quote had been obtained;
(iii) Both quotes were shared with the leaseholders, the Respondent offered to comply with s.20, but no issue was raised and it was the Respondent's understanding that all the leaseholders agreed the work should go ahead;
(iv) The Lessees had opportunity to suggest suppliers (which the Fourth Respondent did), to comment on the quotes (to which they replied) and the Respondent accepted a quote that covered all the work required at less than half the cost of another supplier.

29. The Applicant's Statement of Case (LB1 p.3) relies on the following:

(a) the freeholder was entitled to commission the work and to recharge the cost. It is said that the freeholder has a duty to repair the roof pursuant to section 3 of the Lease and that the costs fell within the scope of service charges chargeable to leaseholders.
(b) the works were urgent. It is said that the roof was leaking in two places, it was winter. It is said that all leaseholders accepted that the work was urgent (including the Fourth Respondent, who suggested in her email of 5 December 2021 that the top floor flat give access the following day given the urgency of the repair).
(c) the procurement process was reasonable. It is said that two estimates were obtained from independent contractors, both quotes were from roofers nominated by lessees, quotes were obtained from both, EC1 Construction's quote was less than half the price of the alternative quote, and had a longer guarantee. It is said that it was reasonable to obtain just two quotes, given the small size of the job. The Applicant's Statement of Case (LB1 p.4) states that it is believed that the Applicant came to a reasonable decision to appoint EC1 Construction, given that the work was urgent, his quote appeared fair, they were likely to find anything significantly cheaper, EC1 Construction came recommended by Ms. Howarth (with whom he had worked) and his quote was cheaper than Crown. It is said (LB1 p.8) that due regard was paid to the Fourth Respondent's observations, but the Applicant believed that it had the Fourth Respondent's implicit consent to the works.
(d) the consultation process was reasonable. It is said that the quotes were shared with leaseholders and that the consultation which did take place was sufficient given the urgency of the work, the cost involved and the fact that the lessees were in contact by email. The Applicant relies on the chronology, including the fact that scaffolding arrangement were discussed with the Respondent and she said she was happy with them, her queries were taken up and answered (all email 14 December 2021), the fact that the Fourth Respondent raised the issue of s.20 on 6 December and the Applicant offered to follow the s.20 process if she insisted, but nothing further was raised until months after the work was done and that was only in relation to the alternative quote.
(e) the roof was repaired satisfactorily. It is said that none of the leaseholders have raised any issued about the quality of the work done.
(f) none of the leaseholders were prejudiced by the lack of s.20 consultation. It is said that, among other things:

(i) The less expensive contractor was used;
(ii) Any damage to the Fourth Respondent's trellis was an accident and unrelated to the consultation process;
(iii) Whatever claim the Respondent may have in relation to the trellis, she is still liable for her share of the roof works;
(iv) In respect of the damage to the Fourth Respondent's trellis:
- The Fourth Respondent's claim lay against the insurance company or the contractor, not the freeholder, as admitted in her email of 30 May 2022;

- As stated in the email of 30 May 2022, it was an old trellis and she could not reasonably recover all the replacement cost;
- The replacement trellis was more elaborate – letter of 21 July 2022;
- The Fourth Respondent accepted compensation for her assessed loss from the insurance company – 27 June 2023
- The fact that the insurance company chose not to pay her full claim does not impose a liability on the freehold co to make up the difference; neither did the fact that the building company closed six months after the works were done.

(g) Any damage to the trellis was not linked to the lack of s.20 consultation.
(h) It is said that if the challenge is successful, all the lessee's liabilities for the works would be limited to £250, but as a freeholder, the Respondent would be liable for one-third of the remainder, i.e. more than she will have to pay if the dispensation is granted.

The Fourth Respondent's case

30. No objection has been received from the leaseholders, save the Fourth Respondent.

31. The Fourth Respondent's objection is set out in her Reply Form (LB1 p.33) supported by her statement in response (LB1 p.34). In summary, she argues:

(a) she has suffered losses of £4,624 (the Fourth Respondent states that she made a claim on her insurance (LB1 p.36) and she was awarded £2,774 less a policy excess of £350) for which she has not been reimbursed, which occurred as a result of the inadequate length of time between the quote from EC1 Construction and commissioning of the works. These additional costs increased the "actual" cost of the works;
(b) she had requested a s.20 consultation;
(c) her concerns over the roofing firm that was chosen were dismissed;
(d) there was time for s.20 consultation;
(e) The Applicant did not allow sufficient time to manage, monitor or coordinate the project adequately;
(f) her concerns about potential damage to her property were not taken seriously;
(g) the directors of the Freehold company had not discharged their duty of care to the Leaseholders.

The Hearing

32. Ms. Schulman, one of the leaseholders and freeholders and a director of the Applicant company attended the hearing and represented the Applicant. The Fourth Respondent, Ms. West, was the only leaseholder who attended the hearing and she represented herself.

33. Ms. West was asked questions by Ms. Schulman. Ms. West agreed that there was a leak to the roof (albeit she said that it was a small leak), that needed to be fixed and that it was the freeholder's responsibility to fix the roof under the Lease. Ms. Schulman confirmed that the freeholder was obliged to repair the roof pursuant to para. 1(a)(i) of the Sixth Schedule and was entitled to cover the costs of doing so pursuant to para. (1) of the Eighth Schedule. She agreed that there had been no reports of any further leaks to the roof since it had been fixed. Ms. West was asked whether she agreed she had benefitted, as a leaseholder and freeholder, from the works to fix the work. Her response was that she was not able to answer that, as she was not a builder or a roofer, but she knew it had been fixed and there did not appear to have been any further problems.

34. Ms. West was asked if she agreed that the Respondent got a quote from a roofer that she had proposed. Her response was that did not really agree with this: she said that she suggested that a quote was obtained from Crown, who were given as an example. She said that the quote from Crown covered a different scope of work to that obtained from EC1 Construction. She was referred to LB1 p.49 and it was put to Ms. West that it was the Respondent's understanding that Ms. West was proposing Crown. Ms. West said that she did suggest them but she was not proposing that they were used: she suggested making contact with them so a credible second quote could be obtained, as the Respondent had only one.

35. Ms. Schulman put to Ms. West that the Respondent had acted on the suggestion and got a quote from Crown, which Ms. West accepted. Ms. West did say she felt that it was all very rushed and it was being done to keep her "quiet" rather than to obtain a credible second quote. She said that she could see that the scope of work was significantly different and she did not know how the contractors had been briefed. She said that did not think that the Respondent ever thought that Crown were providing a credible second quote and she (Ms. West) never regarded it as such.

36. The Tribunal asked Ms. West how the quote from EC1 Construction (LB1 p.46) was different in scope from that provided by Crown (LB1 p.52). Her response was that she did not know how the contractors had been briefed as there was never any scope of work made available and she was not involved in the discussions. She said that she could not comment but that the prices were different and the scope of work was different as Crown were going to do some additional work. The Tribunal then asked Ms. West, on the two documents, whether she was able to say how the proposed works were different and she said that Crown were going to do thing such as a roof overhaul, repair valleys, replace damaged slates, do re-pointing etc. The Tribunal took her to the email of 14 December 2021 which stated that EC1 Construction had said that they would clear the gutters, remove any moss and replace broken tiles and asked if she still said that there was a difference. Her response was that she did not

think that the response was sufficiently detailed or re-assuring enough: she said that it looked like, when asked EC1 Construction had provided a "panicked" response and it did not reassure her that there were two genuine independent quotes.

37. Ms. Schulman stated that she looked at the two quotes side-by-side, she drew up a spreadsheet, compared them and she sent them to EC1 Construction and asked them to comment on the differences. Ms. West said that it was a "bit late in the day to put together a scope of work", that it should have been the first activity on part of directors to work out and discuss the scope of work, what was required and then send the same documents to the different contractors so they could be compared, like-for-like. She stated that she did not think that the email of 14 December 2021 (LB1 p.54) answered her concerns, as it was retrospective.

38. Ms. West was then asked about the scaffolding. She was referred to LB1 p.51, an email of 6 December 2021 which raised concerns on the part of Ms. West about the scaffolding, and then to p.53 (an email of) and it was put to Ms. West that what she had requested was done. Ms. West agreed with this, but she said that her real concern was that no one really knew where the scaffolding would go, that it was always a "ridiculous" suggestion that the scaffolding would go on her terrace, so this was not a concession. She was taken to LB1 p.55 and she agreed that the scaffolders were given her instructions about the decking, but she said that it was pointless to say that the scaffolders had been given the instructions as there was only one place to put the scaffolding. She did not take this was any kind of concession or indication her wishes were being taken into consideration. She accepted that the scaffolders did bridge the decking.

39. Ms. West was asked what prejudice she had suffered as a result of EC1 Construction being chosen to do the works (and that the leaks had not re-appeared). She said that none of her claim referred to the work being unsatisfactory, nor was she saying that EC1 Construction should not have been paid. She said that she had suffered prejudice as the project was too hastily put together, that people did not really know what they were doing, that she flagged up concerns about George Overill that none of this was taken seriously and that price and speed were main considerations. She said that because of this, she suffered loss as her trellis was used improperly and she relied on the finding by the insurer and the photographs. She said that the damage occurred as the scaffolders, who were appointed by EC1 Construction, did not do the right thing: they laid cross-bracing and poles on top of her trellis and stood on it and the insurance company had confirmed that that is what had happened.

40. Ms. West was referred to LB1 p.56 and she confirmed that she stated in that email that the damage occurred when the scaffolding was removed, but she said that this was as far as she was aware, that she was not an expert, and she did not supervise the erection of the scaffolding, so she could not say whether any of damage was caused when the scaffolding was put up. She was referred to p.58 and it was put to her that in that email she explained that the damage had been assessed by the insurance company at 20% and she accepted this.

41. She was also referred to p.56 and it was put to her that she said in that email that the trellis would need replacing in due course and that she did not expect the full cost. She confirmed that was the case and said that the surveyor from the insurance company found that there was no evidence the damage would have been there before the scaffolding. She accepted that unless the trellis had been put up the week before, it was not going to be new, but the insurance company used a formula and it could not be inferred that there was only a small amount of damage.

42. Ms. West was asked if she agreed that the damage could have happened, no matter which roofer had been appointed, that it could have happened if Crown had been used. She said that she could not answer that question as she was not qualified. Ms. Schulman agreed with this position and said that it could not be said that the damage to trellis was causally linked to the choice of roofer. Ms. West said that she could not answer that, as it was too hypothetical. Ms. Schulman said that no matter which roofer was used, it could no be known that there would be no damage to the trellis and Ms. West said that she could not answer that question.

Law

43. Section 20ZA(1) of Landlord and Tenant Act 1985 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."

44. The whole purpose of section 20ZA is to permit a landlord to dispense with the consultation requirements of section 20 of the Act if the tribunal is satisfied that it is reasonable for them to be dispensed with. Such an application may be made retrospectively, as it has been made here.

45. The Tribunal has taken account of the decision in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 in reaching its decision. In that case, in summary the Supreme Court noted the following:

(a) The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements;

(b) The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.

(c) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

(d) The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.

(e) The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).

(f) The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.

(g) The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.

(h) The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.

(i) Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Determination and Reasons

46. It is important to note that, the only issue for the Tribunal, in terms of this application, is whether it is reasonable to dispense with the statutory consultation requirements (LB2 p.171).

47. The Tribunal finds as follows:

48. (1) The Applicant did not comply with the consultation requirements, but as stated in *Daejan*, dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

49. (2) The Tribunal takes into account that these were urgent works, against the factual background of a leak to the roof. There was the risk of further deterioration to the fabric of the building with any further delay. Works were required to remedy the leak to the Building under the terms of the lease (para. 1(a)(i) of the Sixth Schedule) and the Applicant made a realistic assessment that there was an urgent need to complete the works. Indeed, the contents of the email from the Fourth Respondent dated 5 December 2021 suggests that, at that time, she recognised the need or haste in completing the works. It was quite appropriate for the Applicant to consider that the circumstances are such that there is a need to act with some haste to deal with the problem that has been identified and in respect of which the scheme for consultation is not necessarily well suited. As there are two 30-day periods of consultation under the

consultation requirements, allowing for the time needed to obtain estimates, the whole process would have been likely to take at least three months. It is understandable that the Applicant could not wait that long in this case, without risking that further deterioration. The actions of the Applicant are to be judged at the time it decided to consider whether or not to comply with the consultation processes.

50. (3) The Fourth Respondent was made aware of the Applicant's intention to commission EC1 Construction to do the works, and she made a suggestion of an alternative firm. This was acted on, as a quote was sought from it, but, for the reasons set out above, the Applicant chose to commission the works from EC1 Construction. The Fourth Respondent was therefore not denied the opportunity to suggest an alternative firm and, as set out above, was not denied the opportunity to make observations as to the choice of EC1 Construction – her objections were taken account of by the Applicant, but, even taking account of those objections, the Respondent decided to proceed with EC1 Construction.

51. (4) The Fourth Respondent's email of 5 December 2021 stated that at least one more independent quote should be obtained and the Applicant did obtain two quotes. It chose the cheaper one (the Fourth Respondent having raised an issue about the amount of the quotation from EC1 Construction at £2,450). The Applicant took account of the Fourth Respondent's comments comparing the two quotes and obtained confirmation from EC1 Construction that it would remove moss, clear the gutters and replace damaged roof tiles. It provided a longer guarantee than that offered by Crown.

52. (5) Although issues were raised by the Fourth Respondent as to EC1 Construction carrying out the works by her email on 5 December 2021, they were answered in an email on the same day from Ms. Schulman, who position was not that the work should simply be done at the cheapest cost, but that "the most important thing is that the work is done to a good standard and at a reasonable cost". Further objection was raised by the Fourth Respondent on 6 December 2021, but in that email, she stated that she understood that "arrangements have already been made in engaging George Overill for the works". She raised in that email the lack of s.20 consultation, but her position was that in "the case of a genuine emergency we would need to apply to the First Tier Tribunal to seek a dispensation". In its email of 11 December 2021, the Applicant offered to go through the s.20 consultation process. The response from the Fourth Respondent on 14 December 2023 did not request that the Applicant undergo the s.20 consultation process, but raised the issue that the two quotes were not "like-for-like" and that Crown would remove moss, clear the gutters and replace damaged roof tiles. The Fourth Respondent replied on the same day, setting out the response of EC1 Construction to her concerns. At the time that EC1 Construction was instructed to carry out the works, the Fourth Respondent had not "taken up" the Applicant on its offer to undertake s.20 consultation. In her applicant LON/00AG/LSC/2023/0330, the Fourth

Respondent appears to accept that no further issue was taken by her at the time as she states p.17(R) that "[t]t seemed clear any further protest was futile".

53. (6) Whether the works have been carried out to a reasonable standard and at a reasonable cost are not matters which fall within the jurisdiction of the Tribunal in relation to this present application, but it is noted that no issue is raised by the Fourth Respondent as to the works carried out to the roof. This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonableness and/or costs of the work (his decision is, however, to be read in conjunction with the decision of the same date in LON/00AG/LSC/2023/0330).

54. (7) It is not the case that non-compliance with s.20 has caused prejudice to the Fourth Respondent. The Fourth Respondent's complaint is in respect of the damage said to have been caused to her trellis by the scaffolding, but as she very honestly admitted in her evidence, she could not say that the damage would not have happened if another firm had been used. Any losses suffered by the Fourth Respondent in respect of her trellis was not caused by the lack of s.20 consultation (and, as set out above, the Applicant did note the Fourth Respondent's concerns raised in advance about the scaffolding and acted upon them).

55. (8) If dispensation is not granted, all the lessee's liabilities for the works would be limited to £250, but as a freeholder, the Fourth Respondent would be liable for one-third of the remainder, i.e. more than she will have to pay if the dispensation is granted.

56. The Tribunal is therefore satisfied that it is reasonable to grant unconditional dispensation in respect of all or any of the consultation requirements in relation to the subject works.

Costs

57. The Respondent confirmed at the hearing that it was not seeking costs.

Judge Sarah McKeown
19 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)