



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

Case reference : **LON/00AW/LDC/2023/0179**

Property : **89 Onslow Gardens, South Kensington,
London, SW7 3BU**

Applicant : **The Wellcome Trust Limited**

Representative : **Karl Bradley of Ringley Chartered
Surveyors**

Respondents : **The Leaseholders**

Representative : **Not Applicable**

Type of application : **For dispensation under section 20ZA of
the Landlord & Tenant Act 1985**

Tribunal member : **Judge B. MacQueen**

Date of decision : **5 February 2024**

DECISION

Decision of the Tribunal

1. The Tribunal determines that it is reasonable for the Applicant to dispense with the consultation requirements in relation to the works for the reasons set out in this decision.

Introduction

2. The Applicant sought an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) for retrospective dispensation of the

consultation requirements in respect of urgent damp remedial works to the kitchen and hallway in and around Flat A, 89 Onslow Gardens, London, SW7 3BU. The works included repairing cracks along the light well floor and injecting a damp-proof course. The works were of an urgent nature because the damp was becoming progressively worse and beginning to become a more serious risk to health and safety.

3. The Applicant is the Landlord of the Property, and the Respondents are the Leaseholders.

4. A bundle of documents totalling 78 pages was provided by the Applicant. This included the witness statement of Karl Bradley dated 22 November 2023 which outlined the nature of the issue and the remedial works completed, photographs of the damp in and around Flat A, details of the two quotations obtained for the work (set out in the application form at page 9 of the bundle), an email dated 27 November 2023 that confirmed that the application form, directions and witness statement had been sent to the Leaseholders and displayed at the Property, and a specimen copy of the lease.

5. The Application form at page 9 of the bundle set out the works that were completed at the Property in July 2023 and the Applicant's witness statement at pages 22-23 confirmed this.

6. Within the application form, the Applicant stated that dispensation from the requirements to consult tenants before work was commenced was sought as a surveyor's report from Savills' building consultant advised that urgent work to address the damp issue should be undertaken. The urgent nature of the works was also confirmed in the witness statement of Karl Bradley (page 22 of the bundle) because the damp was getting progressively worse and becoming a more serious health and safety issue.

7. On 12 July 2023, the Applicant made this application for retrospective dispensation. The Applicant also stated that the works had been completed in early July 2023 because of their urgent nature.

8. On 3 November 2023, the Tribunal issued Directions. The Applicant was directed to send to each Respondent Leaseholder a copy of the application and the Tribunal's Directions.

9. By email dated 27 November 2023, Anastacia Theophanous of Ringley Law (page 24 of the bundle) confirmed that the application form, Directions and witness statement were emailed to all Leaseholders on 22 November 2023, and were also displayed at the Property.

10. Within the Directions, the Respondents were directed to notify the Applicant and the Tribunal if they objected to the application by 18 December 2023.

11. None of the Respondents has objected to the application.

Relevant Law

12. This is set out in the Appendix annexed below. The only issue for the Tribunal is whether it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable, or the possible application or effect of the Building Safety Act 2022.

Decision

13. The Tribunal's determination took place without parties attending a hearing, in accordance with the Tribunal's Directions. This meant that this application was determined on 5 February 2024 solely on the basis of 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.
14. The relevant test to be applied is 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 financial prejudice in this way.
15. 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 overall works. As stated in the Directions order, the Tribunal was not concerned about the actual cost that has been incurred.
16. The Tribunal was satisfied that the Respondents have been properly notified of this application and had not made any objections.

17. Accordingly, the Tribunal granted the application for the following reasons:

- (a) The Tribunal was satisfied that the nature of the works had to be undertaken by the Applicant sooner rather than later and noted in particular that the damp was said to be getting progressively worse.
- (b) The Tribunal was also satisfied that if the Applicant carried out statutory consultation, it was likely that there would be delay.
- (c) The Tribunal was satisfied that the Respondents have been informed of the need, scope and cost of the works.
- (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.

18. 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.

19. It should be noted that in granting this application, the Tribunal made no finding that the scope and estimated cost of the works are reasonable.

Name: Tribunal Judge
Bernadette MacQueen

Date: 5 February 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).

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.