FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BG/LDC/2023/0281**
Property	:	**39 and 40 Lion Mills, 394-396 Hackney Road, London, E2 7ST**
Applicant	:	**Lion Mill Management Limited**
Representative	:	**Matt Goold, Property Manager of Barnard Cook**
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	:	**4 March 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

1. On 14 November 2023, 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 works to prevent water ingress from the roof of 39 and 40 Lion Mill, 394-396 Hackney Road, London, E2 7ST (the Property). The works included carrying out an isolated repair to the roof and applying a primer coat followed by a fibre roof sealant to the roof gulley. The works were of an urgent nature to prevent any further water ingress and prevent further damage to the Property.

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

3. On 7 December 2023, the Tribunal issued Directions in which the Applicant was directed to send to each Respondent Leaseholder by 15 December 2023 a copy of the application, the Tribunals' Directions, and, if not already sent, a brief statement to explain the reasons for the application. The Applicant was also required to display in a prominent place in the common parts of the Property the application, brief statement and the Tribunal's directions by 15 December 2023.

4. A bundle of documents totalling 46 pages was provided by the Applicant. This included and email to Leaseholders dated 14 December 2023, two quotes describing the works needed (one of which included photographs of the damage to the inside of the Property and the condition of the roof), and a copy of the lease.

5. A copy of an email sent to the Respondent Leaseholders from the Applicant, dated 14 December 2023, was included within the bundle at page 44. This email gave the Respondent Leaseholders details of the works, the chosen contractor and confirmed that the application and

directions had been displayed in the common parts of the Property and sent to the Leaseholders.

6. Within the Directions, the Leaseholders were directed to notify the Applicant and the Tribunal if they objected to the application by 22 January 2024.

7. By email dated 6 February 2024 (page 46 of the bundle) the Applicant confirmed that no reply to the application had been received from the Respondent Leaseholders.

8. No objections from the Respondent Leaseholders have been received by the Tribunal.

Relevant Law

9. 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

10. 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 4 March 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 Respondent Leaseholders nor had they filed any evidence.

11. 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 had been incurred.

16. The Tribunal was satisfied that the Respondent Leaseholders had 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 works were needed to prevent water ingress and further damage to the fabric of the building.

(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 Respondent Leaseholders had been informed of the need, scope and cost of the works.

(e) Importantly, the real prejudice to the Respondent Leaseholders 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 Respondent Leaseholders 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:** 4 March 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.