FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AM/LDC/2023/0202**
Property	**:**	**248 Dalston Lane, London E8 1LG**
Applicant	**:**	**Mr Harjit Singh, represented by Mr P Gunby MRICS of B Bailey Property Management**
Respondents	**:**	**Ms D Nwawudu**
Type of Application	**:**	**Dispensation from consultation requirements under Landlord and Tenant Act 1985 section 20ZA**
Tribunal Members	**:**	**Judge Professor R Percival** **Mr R Waterhouse FRICS**
Venue and date of hearing	**:**	**10 Alfred Place** **9 November 2023**
Date of Decision	**:**	**13 November 2023**

DECISION

Decisions of the tribunal

(1) The Tribunal, pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act"), grants dispensation from the consultation requirements in respect of the works the subject of the application.

Procedural

1. The landlord submitted an application for dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act") and the regulations thereunder, dated 14 June 2023.

2. The Tribunal gave directions which were subsequently amended. The directions provided for a form to be distributed to those who pay the service charge to allow them to object to or agree with the application, and, if objecting, to provide such further material as they sought to rely on. The application and directions was required to be sent to the leaseholders and any sublessees, and to be displayed as a notice in the common parts of the property. The deadline, as amended, for return of the forms, to the Applicant and the Tribunal, was 22 September 2023.

3. The Respondent provide a statement in response, objecting to the application.

The property, the leases and the works

4. The property is a lower ground floor to second floor nineteenth century house, which has been converted into three flats. The Respondent is the long lessee of all three flats. The flats are let by her to tenants on short term tenancies.

5. The leases provide extensive demises, such that the exterior walls, roof and foundations are demised, and are subject to lessees' repairing covenants. However, in each lease, provision is made for the other flats to contribute a third of the costs of (inter alia) the repair of the external walls (clause 3(15) in respect of two of the flats, clause 3(16) in the other). Insuring the building is the responsibility of the lessee under one of the leases, with a similar contribution requirement (with a default power for the landlord to do so).

6. There is a default provision for repairs to be done by the landlord. By clause 3(6) in each lease, the lessee covenants to permit the landlord and his agents to examine the condition of the demised premises

> "and thereupon the Landlord may serve upon the Tenants notice in writing specifying any repairs necessary to be done

> and require the Tenant forthwith to execute the same and if the Tenant shall not within two months after the service of such notice proceed diligently with the execution of the Demised Premises and execute such repairs and the costs thereof shall be a debt to the Landlord from the Tenant…".

7. By clause 3(2) of the leases, the lessees covenant

> "To pay all existing and future rates taxes assessments and outgoings whether parliamentary local or otherwise now or hereafter imposed or charged upon the demised premises or any part thereof or on the Landlord or on the Tenant respectively PROVIDED ALWAYS that where any such outgoings are charged upon the remaining flats without apportionment the Tenant shall be liable to pay one third of such outgoings and the Landlord shall keep the Tenant indemnified against the payment of the other two thirds".

8. The works were required by a notice under Town and Country Planning Act 1990, section 215. The notice was served on 25 October 2022 by the local authority. The works, in summary were to repair defective brickwork on the front elevation and boundary wall; to remove various pipes and cables; to prepare and paint the external woodwork, the window cills, the stucco parapet and surrounds to the windows and doors, specified metal work and two pier caps on the boundary wall; and to remove plants and rubbish from the front garden.

9. The Applicant reports that, initially, an appeal was lodged against the section 215 notice (on 6 November 2022), and a date (7 February 2023) was fixed for a hearing at the magistrates' court. However, on 5 February 2023, on the advice of Mr Gunby, the Applicant withdrew his appeal. At the hearing, the Respondent explained that she had also submitted an appeal, and produced an appeal in the form of a letter from solicitors, dated 17 November 2023, and stamped by the magistrates' court the following day. Mr Gunby did not object to us receiving the letter, despite it not having been submitted in the bundle. Mr Gunby had been informed of the Respondent's appeal in an email of 7 February 2023, a print out of which was in the bundle.

10. The Applicant sent a first stage notice of intended works under section 20 of the 1985 Act to the Respondent on 30 January 2023. It was sent to the Respondent at the property, and at an address in Maida Vale that appeared as the Land Registry extract for one of the flats. That notice specified work which went beyond that required by the section 215 notice, being based on a broader specification prepared by Mr Gunby after an inspection of the property.

11. The Applicant reports that there were difficulties communicating with the Respondent, which were at least partly resolved after Mr Gunby made contact with what he supposed were her agents, Sunrose

Property, in December 2022. An email was received by the Applicant's agent on 7 February 2023. At the hearing, Ms Nwawudu told us that Sunrose was her company. Until July 2023, she had been abroad, and the company had been operated by her two brothers, one of whom, Mr E Nwawude, accompanied her at the hearing. The other brother, Mr M Nwawude, was, it appears, the person to whom Mr Gunby spoke.

12. On 21 February 2023, after the works had been commenced, the Applicant's agent sent out what is described as a second stage consultation. That document included one estimate for the full specification of works based on Mr Gunby's inspection, and another estimate for the works required only by the section 215 notice. The estimate for the whole of the works was £34,884 (from Complete Fix ltd). That for the works specified in the section 215 notice was £15,258 including VAT. The letter declares the Applicant's intention to "put on hold" the additional works specified in the first notice, and accordingly, the second estimate became the basis for the work done, and the charge sought from the Respondent. The final demand made by the Respondent included a further sum of £3,325 (including VAT) for Mr Gunby's fees.

13. The works were carried out between 8 February and 9 March 2023.

Determination

14. The relevant statutory provisions are sections 20 and 20ZA of the Landlord and Tenant Act 1983, and the Service Charges (Consultation etc)(England) Regulations 2003. They may be consulted at the following URLs respectively:

    https://www.legislation.gov.uk/ukpga/ 1985/70
    https://www.legislation.gov.uk/uksi/2003/1987/contents/made

15. The Tribunal is concerned solely with an application under section 20ZA of the 1985 Act to dispense with the consultation requirements under section 20 and the regulations.

16. For the Applicant, Mr Gunby argued that the work was required to be done, and the landlord was required to undertake it under clause 3(2) of the leases. Further, his letter of 30 January 2023 was in effect a notice under clause 3(6) requiring the tenant to undertake the work. Their failure to do so meant that the Applicant was entitled to do so, and to charge the lessees.

17. That letter starts by expressing disappointment that there had been no response to previous correspondence, refers to the listing of the appeal on 8 February 2023, refers to the estimate from Complete Fix Ltd, asserts that the Respondent's contribution is 100%, and states that

costs have been increased by the Respondent's failure to engage. It closes by referring to an application for dispensation.

18. Mr Gunby's assumption was that the time limit imposed in the notice for the work to be completed – six months – continued to run, and that the matter had therefore become very urgent.

19. The Respondent explained that she had been out of the country until July 2023. Her brothers had been attending to her interests through Sunrose. She argued that there had been time to undertake a consultation process, given that the six month time limit imposed in the section 215 notice was suspended as a result of the pending appeal.

20. We explained the effect of *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854, and asked if she could demonstrate prejudice as a result of the failure to consult. She expressed doubts as to the extent of the work done, although she accepted the Applicant's evidence that the local authority had concluded that the works had been undertaken (with a minor exception to be completed thereafter) and closed the case accordingly. She told us that the immediately neighbouring property had also been served with a notice, and she had had a conversation with the freeholder. She was told that the work had been undertaken for a much lower sum, but could not recall the exact figure. She said that she thought that Sunrose – which had some experience of renovating properties for rental – would have been able to have complete the work for about £5,000.

21. We think that the Respondent is correct that the period specified in the notice ceased to have effect when an appeal is lodged, as the notice has no effect pending determination of the appeal or withdrawal (Town and Country Planning Act 1990, section 217(3)). However, it is not clear that this has any direct effect on our determination.

22. Section 20 applies to impose the consultation requirements where a lessee's relevant contribution to pay for "qualifying works" exceeds a specified amount, currently £250 (section 20(1) and (2), regulation 6 of the 2003 Regulations).

23. The definition of "qualifying works" in the 1985 Act is broad. The term means works on a building or any other premises (section 20ZA(2)). The works fall into that category.

24. However, the consultation requirements do not bite unless the relevant contribution reaches the specified level. A relevant contribution is the amount which a lessee may be required to pay under the terms of the lease to contribute, by way of a service charge, to the cost of the qualifying works (section 20(2)).

25. An application for dispensation can only bite if the lessee is liable under the lease to pay the relevant contribution. In respect of this application, we consider that there is a question as to whether that is the case.

26. The issue that may arise is whether the Applicant is entitled to demand a service charge to pay for the works. The leases in respect of this property are unusual, in that they appear to have been drafted to impose very limited responsibilities on the landlord. As we have noted, the demise of each flat is extensive, and provision is made for the lessees to be responsible for repairs to parts of the building usually reserved to the landlord – the external walls, the roof, the foundations – subject to a right for those lessees to reclaim a contribution from each of the other lessees. The lessees (which happen to be one person in this case) are therefore responsible for the repair of the front elevation, which amounts to most of the work required in the section 215 notice.

27. It is only if, following an inspection, the freeholder gives a notice requiring a lessee to undertake repairs, and the lessee fails to start to do so (broadly) within two months, that the freeholder may do the work himself (clause 3(6)), and make a charge for it to the lessee (clause 3(15)/(16)).

28. In this case, there are issues as to whether these conditions have been met. First, it is not clear that, as the Applicant argues, the tenant's covenant under clause 3(2) allows or requires the freeholder to undertake work required by a section 215 notice.

29. Secondly, there is a question as to whether the letter relied on by Mr Gunby amounts to the notice required under clause 3(6), such as to create an obligation under clause 3(15)/(16) to repay the landlord; or alternatively whether that the latter clause provides an independent basis (ie apart from works undertaken in default, under clause 3(6)) for repayment.

30. These are important matters which go the jurisdiction of the Tribunal. If there is no obligation on the lessees to pay a relevant contribution, then the consultation requirements do not arise, and we have no jurisdiction to dispense with them.

31. However, they are also (at least largely) novel points, not raised by the parties, both of whom were not legally represented.

32. In these circumstances, we do not consider it would be appropriate for us to ignore what are potentially foundational issues for our jurisdiction. But neither do we consider we can determine them, given their novelty, without hearing representations. It would not have been appropriate to have expected parties without legal representation to

have dealt with these issues at the hearing, at the instance of the Tribunal.

33. We have considered whether we should make provision for written representations, and thereafter determine the issues. However, again in the context of unrepresented parties, we do not consider that this would be a satisfactory mechanism.

34. We conclude, therefore, that we should consider the question of dispensation, *assuming but not finding* that it arises in this case. The issues will, therefore, remain undecided, and can be the subject of a further application under section 27A of the 1985 Act, on the basis of an application in respect of the payability of the relevant service charge, if that course of action commends itself to one of the parties.

35. On that basis, we dispense with the consultation requirements. Where an application is made for dispensation, the Tribunal must grant it unless a lessee can demonstrate that they are prejudiced by the failure to consult (and, if they are, we are, ordinarily, to dispense on conditions that mitigate that prejudice): *Deajan*. In this case, the Respondent's assertion that the work could have been done more cheaply – indeed, very substantially more cheaply – is entirely speculative. There is no alternative quotation to put against that provided by the contractor that undertook the work, and, on its face, a total figure for the works of £5,000 appears to the Tribunal to be wholly unrealistic.

36. We emphasise that this application relates solely to the granting of dispensation, and on the conditional basis explained above. In addition to the possibility of an application under section 27A of the 1985 Act on the basis outlined above, if the Respondent considers the cost of the works to be excessive or the quality of the workmanship poor, or if costs sought to be recovered through the service charge are otherwise not reasonably incurred, then it is also open to her to apply to the Tribunal for a determination under section 27A on that basis.

Rights of appeal

37. 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 London regional office.

38. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

39. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

40. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Judge Prof Richard Percival **Date:** 13 November 2023