



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

**Case reference** : LON/00BD/LDC/2023/0039

**HMCTS code  
(paper, video,  
audio)** : P: PAPERREMOTE

**Property** : 30 Vicarage Road, Hampton Wick,  
Kingston-upon-Thames, Surrey, KT1  
4ED

**Applicant** : Southern Land Securities Ltd

**Representative** : **Junique Lawrence**  
Together Property Management Ltd

**Respondent** : (1) Clair Butler  
(2) J Vonk & C Van Den Broek  
(3) M P Flinn  
(4) Christopher Paul Ruston  
(5) B M Dickey

**Type of  
application** : To dispense with the statutory  
consultation requirements under  
section 20ZA Landlord and Tenant Act  
1985

**Tribunal  
members** : Judge S McKeown

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

**Date of  
decision** : 24 April 2023

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers which has been not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested the same and all issues could be determined on paper. The documents that the Tribunal was referred to are contained in a bundle of 35 pages. The order made is described below.

## **Decisions of the tribunal**

**The Tribunal grants the application for retrospective dispensation from further statutory consultation in respect of the subject works, namely the works carried out to repair the roof of the Property.**

**The applicant is to send a copy of their determination to all of the lessees liable to contribute to service charges. It should also display copies in a prominent position 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 the cost of the work.**

## **The application**

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the Act") for retrospective dispensation from consultation in respect of works carried out to repair the roof of the Property which was causing damage to the flat below. 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. The cost of the works which are the subject of the application exceed this threshold.
2. By directions dated 13 March 2023 (the "directions") the tribunal required that any leaseholders (and sublessees) who opposed the application were to (by 3 April 2023) complete the attached reply form and send it by email to the applicant/landlord and the tribunal and to send to the applicant/landlord a statement in response to the application with a copy of the reply form (by email or by post) along with copies of any documents upon which they intended to rely.
3. The directions provided that the tribunal would decide the matter on the basis of written submissions unless any party requested a hearing. No such request has been made. By letter dated 10 March 2023, the

Tribunal advised the parties that the application would be dealt with on consideration of the documents and without an oral hearing.

### **The Applicant's case**

3. The premises are a converted semi-detached freehold house, which now contain five leasehold flats situated across three storeys.
4. The applicant is the freeholder of the Property, acting by its managing agent, Together Property Management Ltd. The freeholder covenants to provide services under the terms of the leases under which the flats are held. These services include (at paragraph 3 of the lease) the obligations set out in the Seventh Schedule: To keep the Reserved Property in good order repair and condition...". The "Reserved Property" is defined as the part of the Building not included in the Flats and described in the Third Schedule, which provides, among other things, as follows: "... the main structural parts of the Building including... the roofs...".
5. In its application the applicant explained that it was contacted in October 2022 by one of the leaseholders to advise of a leak from the roof causing damp into flat below, that it was initially suspected that it was related to an issue which had previously been repaired, but on inspection by Tudor Roofing, the applicant was advised that it was a new issue and Tudor Roofing provided a quotation in relation to the works.
6. The works are those detailed in an invoice number 3197 and included re-fixing slipped tiles, re-pointing of the valley, re-pointing part of ridge tiles and clearing some gutters. The total cost of the works was £1,350, including scaffolding that was required.
7. It is said that works were done as an emergency to minimise the damage being caused to the flat below and that the leaseholders were advised this was very urgent as the leak was dripping into the cupboard containing the boiler and electrical sources. For this reason, no section 20 notices were issued to the leaseholders and the applicant seeks dispensation.

### **The Respondent's case**

8. No respondent objected to the application

### **Determination & Reasons**

9. Section 20ZA(1) of the Act 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.”*

10. 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.
11. The Tribunal has taken account 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 consequences 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 tenant’s reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord’s application under section 20ZA(1).
  - f. 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 provisions 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.

12. There is no evidence before the tribunal that the respondents were prejudiced by the failure of the applicant to comply with the consultation requirements. The tribunal is therefore satisfied that it is reasonable to dispense with all or any of the consultation requirements in relation to the works carried out to repair the roof.
13. 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. 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 works.

**Name:** Judge S McKeown

**Date:** 24 April 2023

### **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).