



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

**Case reference** : LON/00AN/LDC/2024/0059

**HMCTS code** : P: PAPERREMOTE

**Property** : 93 Hammersmith Grove, London, W6 0NQ

**Applicant** : Southern Land Securities

**Representative** : Warwick Estates

**Respondents** : All the leaseholders of 93 Hammersmith Grove, London, W6 0NQ

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

**Tribunal members** : Judge Tueje  
Mr S Wheeler MCIEH, CEnvH

**Date of decision** : 8<sup>th</sup> July 2024

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**DECISION**

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**Description of hearing**

This has been a remote hearing on the papers which has been consented to by the Applicant and not objected to by any Respondent. The form of the remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper.

## **Decision of the Tribunal**

*In this determination, statutory references relate to the Landlord and Tenant Act 1985 unless otherwise stated.*

- (1) The Tribunal grants retrospective unconditional dispensation pursuant to s.20ZA in respect of works to clear the gulley and/or guttering so as to prevent further leaks into the second floor flat and terrace to the property at 93 Hammersmith Grove, London, W6 0NQ (the "Property"). These works were carried out by Xtra Maintenance Limited, costing £1,548.44 including VAT.
- (2) 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 liability to pay, for a reason other than non-consultation in respect of the subject works, and the reasonableness and/or cost of the subject works.

## **The Application**

1. This Application under section 20ZA, is dated 14<sup>th</sup> February 2024, and seeks dispensation from the statutory consultation requirements in respect of the above-mentioned works required at the Property.

## **Background**

2. The Applicant owns the freehold of the Property, which is managed by Warwick Estates, its representatives in this application. The Respondents are all the leasehold owners of the premises within the Property.
3. The Property is a mixed-use building with commercial premises on the ground floor, and dwellings on the remaining floors.
4. The Application relates to works required to remedy leaks caused by defective guttering and gulley (the "Works"), resulting in leaks to some dwellings within the Property, in particular, the second floor flat and roof terrace.
5. As stated, the Application is dated 14<sup>th</sup> February 2024, containing the following grounds for dispensation:

*There is a leak which is affecting the Second Floor Flat & Roof Terrace. The work required were to carry out gully/space gutter clearance and also a sealant to be applied around the affected areas. This required two workmen.*

6. The following day, 15<sup>th</sup> February 2024, Xtra Maintenance Limited carried out the Works.

7. On 26<sup>th</sup> March 2024 the Applicant's representatives e-mailed the Respondent leaseholders informing them the Works had been carried out, and that the Works were necessary for health and safety reasons. The Respondents were also informed the Applicant had made this Application to the Tribunal. There was one response to this e-mail from a leaseholder querying whether they needed to take any further action in connection with the notification received regarding the Works.
8. Following receipt of the Application, the Tribunal made a directions order dated 20<sup>th</sup> March 2024, including providing an opportunity for the Respondents to object to the Application.
9. There have been no objections to the Application.

### **The hearing**

10. In making its decision, the Tribunal took into account the information provided by the Applicant by way of an indexed paginated bundle comprising 51 pages including the following documents:
  - 10.1 The Application for dispensation;
  - 10.2 The Tribunal's directions order dated 20<sup>th</sup> March 2024;
  - 10.3 A brief statement on behalf of the Applicant
  - 10.4 Xtra Maintenance Ltd's invoice for the works dated 15<sup>th</sup> February 2024;
  - 10.5 E-mail exchanges regarding the works between the Applicant's representatives and one leaseholder;
  - 10.6 A sample lease.

### **The Legal Framework**

11. So far as is relevant, section 20 states:
  - (1) *Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsections (6) or (7) (or both) unless the consultation have been either-*
    - (a) *Complied with in relation to the works or agreement, or*
    - (b) *Except in the case of works to which section 20D applies, 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 payment of service charges) to relevant costs incurred on carrying out the works under the agreement.*
  - (3) *This section applies to qualifying works if relevant costs incurred or on carrying out the works exceed an appropriate amount.*

12. Section 20ZA(1) continues:

*Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*

13. In ***Daejan Investments Limited v Benson and others [2013] UKSC 14*** the Supreme Court provided the following guidance when dealing with section 20ZA applications for dispensation of the statutory consultation requirements:

- 13.1 The purpose of sections 19 to 20ZA is to ensure leaseholders are not required to pay any more than is necessary for services provided, and that they are not required to pay for unnecessary or unsatisfactory services.

- 13.2 The Tribunal is to focus on the extent to which leaseholders have been prejudiced by a landlord's failure to comply with the requirements under section 20.

- 13.3 Ordinarily, where the failure to comply with section 20 had not affected the extent, quality and costs of the works carried out, dispensation is more likely to be granted.

- 13.4 The Tribunal's main focus on such applications is what prejudice, if any, have leaseholders suffered.

- 13.5 The leaseholders bear a factual burden of identifying some relevant prejudice that they would or might suffer.

- 13.6 Where leaseholders make a credible case regarding prejudice, the landlord bears the legal burden to rebut this.

- 13.7 If appropriate, the Tribunal may grant conditional dispensation.

### **The Tribunal's Decision**

14. The Tribunal reached its decision after considering the documents in the bundle, and taking into account its assessment of that evidence.

15. This determination does not refer to every matter raised, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was relevant to a specific issue, it was considered by the Tribunal.

16. The Tribunal grants dispensation pursuant to s.20ZA in respect of the Works at the Property carried out by Xtra Maintenance Limited, costing £1,548.44 including VAT.

### **The Tribunal's Reasons**

17. The Tribunal has had regard to the nature of the works and finds the works were necessary. The defective guttering and gulley were causing rainwater ingress affecting the Property. At that time of year, it was necessary to carry out works without delay, due to the risk of further rainwater damage.
18. The Tribunal takes into account that when leaseholders were notified about the Works and the Application, none objected. Leaseholders were given an opportunity to raise enquiries, which the Applicant's representative dealt with by e-mail.
19. Based on the Tribunal's judgment and experience, we are satisfied that the cost of the works was no more than is necessary, particularly taking into account that two individuals were required to safely carry out the Works.
20. There is no evidence before the Tribunal indicating that the Applicant's failure to comply with the section 20 requirements would affect the extent, quality, and cost of the works to be carried out.
21. By the directions order dated 20<sup>th</sup> March 2024, the leaseholders were afforded an opportunity to object to this application; none of the leaseholders have objected to the application. Therefore, the Tribunal proceeds on the basis that the leaseholders have no objections to the application, and that there has been no relevant prejudice to leaseholders, who are likely to have objected to the application if there had been any prejudice.
22. For the reasons stated at paragraph 17 above, the Tribunal is satisfied that the Works were required to the Property. Therefore, the Tribunal is satisfied that it is reasonable to grant dispensation from the consultation requirements. The Tribunal has borne in mind the Supreme Court decision in *Daejan Investments Limited v Benson and others [2013] UKSC 14*. There is no evidence of any prejudice caused to the leaseholders and indeed none have raised an objection to the application. Dispensation is therefore granted from the statutory consultation requirements.

**Name:** Judge Tueje

**Date:** 8<sup>th</sup> July 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).