



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

**Case reference** : LON/00BE/LDC/2023/0315

**Property** : 186 Crystal Palace Road, East Dulwich,  
London, SE22 9EP

**Applicant** : Southern Land Securities Limited

**Representative** : Elly Chatzimanoli - Together Property  
Management Ltd

**Respondents** : Mr Michelmore and Mrs Middleton  
(Flat A)  
Mr K. Amuludun and Ms Lound (Flat B)

**Type of Application** : Application for the dispensation of  
consultation requirements pursuant to  
S.20ZA of the Landlord and Tenant Act  
1985

**Tribunal Members** : Judge Hugh Lumby

**Venue** : Paper determination

**Date of Decision** : 8<sup>th</sup> May 2024

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**DECISION**

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## **Decision of the Tribunal**

The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act).

### **The background to the application**

1. The Property is a mid-terrace building, constructed in around 1920 and comprising a ground and two upper floors. It consists of two self-contained flats with the upper flat being a duplex in design.
2. The Applicant is the freeholder of the Property and the Respondents are the leaseholders.
3. The Applicant has applied for dispensation from the statutory consultation requirements in respect of urgent works to repair the felt roof above the front porch to prevent water ingress into the ground floor flat (Flat A). The application was received on 5 December 2023.
4. The initial report of water ingress was investigated by Hamilton Roofing on behalf of the Applicant. They recommended that the felt roof above the front porch should be renewed and provided a quotation for the work (being £1,480 plus VAT). JSM Building Solutions were also invited to provide a second quotation, quoting £1,250 (with no VAT being payable). As the JSM Building Solutions quotation was lower than that provided by Hamilton Roofing, they were instructed to proceed with the works, which were completed on 26 November 2023. The cost of the works was £1,250, in accordance with JSM Building Solutions' quotation.
5. The Applicant proceeded with the works without consulting with the Respondents because they considered the works needed to be done urgently. The reason for this was because the leak was ongoing, causing internal damage whenever it rained. The works were therefore required to prevent further damage.
6. The Respondents were informed of the intention to carry out the works and to apply to the Tribunal for dispensation. No responses (and so no objections) were received to the application.
7. The Tribunal issued Directions dated 22 January 2024 in relation to the conduct of the case. It was decided in those Directions that the application be determined without a hearing, by way of a paper case. No parties have objected to this decision.
8. The Applicant was due to provide the Tribunal with the case bundle by 8 April 2024. However, it informed the Tribunal on that date that on 29 March 2024 it had received a report of further water ingress. The

contractors were due to attend the property on 10 April to ascertain whether further works are required which might affect the current application. By Directions dated 10 April 2024, it was agreed that the date for submission of the bundle be amended to 26 April 2024.

9. On investigation, the Applicant was advised by JSM Building Solutions that no further work was required, the cause of the minor leak being blocked guttering which was resolved at the time of the inspection.
10. The Tribunal did not inspect the Property as it considered the documentation and information before it in the set of documents prepared by the Applicant enabled the Tribunal to proceed with this determination.
11. This has been a paper determination which has not been objected to by the parties. The documents that were referred to are in a bundle consisting of 87 pages, comprising the Applicant's application, a list of the Respondents, the specimen lease provided with it, plus the Tribunal's Directions dated 22 January 2024 and 10 April 2024, a statement of case from the managing agent and two quotations and an invoice for the works as well as correspondence with the Respondents, the contents of which has been recorded.
12. It was noted that the copy lease provided was missing several pages (pages 3 and 10). The Tribunal considered that sufficient had nonetheless been provided to enable it to make a determination in relation to the Applicant's application.

### **The issues**

13. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether or not service charges will be reasonable or payable.

### **Law**

14. Section 20 of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
15. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by an application such as this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.

16. The Applicant seeks dispensation under section 20ZA of the 1985 Act from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act.

17. Section 20ZA relates to consultation requirements and provides as follows:

*“(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.*

*(2) In section 20 and this section—*

*“qualifying works” means works on a building or any other premises, and “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*

....

*(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.*

*(5) Regulations under subsection (4) may in particular include provision requiring the landlord—*

*(a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,*

*(b) to obtain estimates for proposed works or agreements,*

*(c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,*

*(d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and*

*(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.*

18. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14, by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.

19. The Supreme Court came to the following conclusions:

a. The correct legal test on an application to the Tribunal for dispensation is: [11][12]“Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord’s failure to comply with the requirements?”

b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.

- c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord's failure to comply.
  - d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.
  - e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
  - f. The onus is on the leaseholders to establish:
    - i. what steps they would have taken had the breach not happened and
    - ii. in what way their rights under (b) above have been prejudiced as a consequence.
16. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.

### **Consideration**

- 17. Having read the evidence and submissions from the Applicant and having considered all of the documents and grounds for making the application provided by the Applicant, the Tribunal determines the dispensation issues as follows.
- 18. The Tribunal is of the view that, taking into account that there have been no objections from the Respondents, it could not find prejudice to any of the leaseholders of the Property by the granting of dispensation relating to the works to repair the felt roof above the front porch to prevent water ingress into the ground floor flat (Flat A) and as set out in the application.
- 19. The Applicant believes that the works were urgent to prevent further water ingress and damage to the ground floor flat. On the evidence before it, the Tribunal agrees with this conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application.
- 20. The Applicant shall be responsible for formally serving a copy of the Tribunal's decision on the leaseholders. Furthermore, the Applicant shall place a copy of the Tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a

sufficiently prominent link to both on its home page. It should also be posted in a prominent position in the communal areas.

**Name:** Tribunal Judge Lumby      **Date:** 8 May 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).