



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

Case reference : **LON/00AE/LDC/2023/0324**

Property : **112 Brondesbury Villas, London,
NW6 6AD**

Applicant : **Sarum Properties Limited**

Representative : **Remus Management Limited,
Managing Agent**

Respondents : **The leaseholders at 112
Brondesbury Villas**

Representative : **N/A**

Type of application : **For dispensation under section
20ZA of the Landlord & Tenant Act
1985**

Tribunal member : **Tribunal Judge I Mohabir**

Date of decision : **16 July 2024**

DECISION

Introduction

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) for *retrospective* dispensation with the consultation requirements in respect of roof repairs at the property known as 112 Brondesbury Villas, London, NW6 6AD (“the property”).
2. The Applicant is the freeholder and landlord of the property and the Respondents are the long leaseholders.
3. The property is described as being a house converted into 4 residential flats.
4. It is the Applicant’s case that the roof repairs were necessary because there was water ingress from the roof affecting multiple areas in the top floor and the top floor flat, which was causing damage to these areas. Carrying out statutory consultation would have led to further damage and thereby greater remedial and insurance costs. This was avoided by carrying out the remedial works sooner rather than later.
5. The Applicant had obtained a number of estimates for the cost of the remedial works and had commenced consultation by serving a Notice of Intention on the Respondents. However, at the time the application was made in December 2023, it was decided to progress with the roof works due to the winter weather and the length of time the lessees had suffered from the water ingress.
6. On 31 January 2024, the Tribunal issued Directions. The Respondents were directed to respond to the application stating whether they objected to it in any way. No objections have been received.

Relevant Law

7. This is set out in the Appendix annexed hereto.

Decision

8. As directed, the Tribunal’s determination “on the papers” took place on 16 July 2024 and was based solely on the documentary evidence filed by the Applicant. No evidence was filed or served by any of the Respondents.
9. The relevant test to be applied in an application such as this has been 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 prejudice in this way.

10. 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 remedial roof works. As stated in the directions order, the Tribunal is not concerned about the actual cost that has been incurred.
11. The Tribunal granted the application for the following main reasons:
 - (a) The Tribunal was satisfied that any delay incurred by the Applicant having to carry out statutory consultation would inevitably have resulted in further significant loss of amenity to the affected leaseholders and possibly resulted in greater overall remedial cost because of further deterioration in the fabric of the building. The Tribunal made no finding that delay would also have resulted in greater insurance costs because it was not told if an insurance claim had been made for the roof repairs and, in any event, no evidence had been presented by the Applicant about any such increased costs.
 - (b) at all material times, the Tribunal was satisfied that the Respondents have been kept informed of the need, scope and estimated cost of the proposed works.
 - (c) the Tribunal was satisfied that the Respondents have been served with the application and the evidence in support and there has been no objection from any of them. The Tribunal attached significant weight to this.
 - (d) importantly, any real prejudice to the Respondents 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.
12. It should be noted that in granting this part of the application, the Tribunal makes no finding that the scope and cost of the repairs are reasonable.

Name: Tribunal Judge I
Mohabir

Date: 16 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).

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.