



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

Case reference : **LON/00AD/LDC/2024/0019**

Property : **Flats 1-8 Darlington Court, Chatswood
Mews, Carlton Road, Sidcup, DA14 6FB**

Applicant : **Park View Sidcup Management
Company Ltd**

Representative : **Jessica Clough of Warwick Estates
(reference 20743)**

Respondents : **The leaseholders of Flats 1-8
Darlington Court, DA14 6FB**

Representative : **N/A**

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

Tribunal members : **Judge Bernadette MacQueen
Jane Mann, MCIEH**

Date of decision : **7 May 2024**

DECISION

Decision of the Tribunal

1. The Tribunal determines that it was reasonable for the Applicant to dispense with the consultation requirements in relation to the works for the reasons set out in this decision.

Introduction

2. The Applicant sought an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) for dispensation of the consultation requirements in respect of remedial works required to replace the rear gutter at Flats 1-8 Darlington Court, Chatswood Mews, Carlton Road, Sidcup, DA14 6FB (the Property). The works included the erection of scaffold towers, the removal of the main roof gutter and the installation of a deep flow gutter system, including gutter guards.
3. The Applicant was the management company of the Property, and the Respondents were the leaseholders.
4. On 22 December 2023, the Applicant made this application for dispensation. The Applicant in the application form and also at page 18 of the bundle stated that the work was urgent because the rear gutter was not draining properly. This caused water to overflow and penetrate into the render, which resulted in render falling from the building, and caused water to ingress into the fabric of the building.
5. On 9 February 2024, the Tribunal issued directions. The Applicant was directed to send to each leaseholder (and any residential sublessees) a copy of the application, and to display it in the common parts by 1 March 2024. If a leaseholder or sublessees wished to oppose the application, they had to complete the reply form attached to the Directions by 29 March 2024. The Applicant was directed to provide the Tribunal with a

bundle of relevant documents for use in the determination of the application. The Tribunal directed that unless any request was made to the Tribunal for an oral hearing, the matter would be determined by the Tribunal reviewing and considering the documents that had been sent to it (a paper determination).

6. A bundle of documents totalling 58 pages was provided by the Applicant. This included a quote dated 20 December 2023 for the works, and a copy of the lease dated 23 October 2015.
7. Although not within the bundle, the Applicant confirmed by email to the Tribunal dated 29 February 2024 that the first direction had been complied with. The first direction required the Applicant by 1 March 2024 to send to each leaseholder and display in a prominent place in the common parts of the Property a copy of the application form, and if not already detailed in the application form, a brief statement to explain the reasons for the application.
8. At page 23 of the bundle, in an unsigned or dated document marked “Responses”, the Applicant confirmed that no responses or objections had been received from any leaseholder.
9. The Tribunal did not receive any request for a hearing to be held, and therefore the Tribunal dealt with this as a paper determination.

Relevant Law

10. This is set out in the Appendix annexed below. The only issue for the

Tribunal was whether it was reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable, or the possible application or effect of the Building Safety Act 2022.

Decision

11. The Tribunal's determination took place without parties attending a hearing, in accordance with the Tribunal's directions. This meant that this application was determined on 7 May 2024 solely on the basis of the documentary evidence filed by the Applicant. As stated earlier, no objections had been received from any of the Respondents nor had they filed any evidence.
12. 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 financial prejudice in this way.
13. 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 overall works. As stated in the directions order, the Tribunal was not concerned about the actual cost that had been incurred.
14. The Tribunal was satisfied that the Respondents had been properly notified of this application and had not made any objections.
15. Accordingly, the Tribunal granted the application for the following reasons:
 - (a) the Tribunal was satisfied that the nature of the works had to be

undertaken by the Applicant sooner rather than later as the gutter was not draining and so water was overflowing and penetrating the render causing water ingress into the fabric of the building, as well as causing render to crumble and fall from the building.

- (b) The Tribunal was also satisfied that if the Applicant carried out statutory consultation, it was likely that there would be delay.
- (c) the Tribunal was satisfied that the Respondents had been informed of the need, scope and estimated cost of the proposed works.
- (d) the Tribunal was satisfied that the Respondents had been served with the application and the evidence in support and no objection from any of them had been received.
- (e) importantly, the 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.

16. The Tribunal, therefore, concluded that the Respondents were not being prejudiced by the Applicant's failure to consult and the application was granted as sought.

17. It should be noted that in granting this application, the Tribunal made no finding that the scope and estimated cost of the repairs were reasonable.

Name: Judge Bernadette
MacQueen

Date: 7 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).

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.