FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LDC/2024/0198**
Applicant	**:**	**118 Gauden Road Ltd**
Representative	**:**	**Dorian Hardacre (Director)**
Respondents	**:**	**(1) D S R Hardacre** **(2) A Chakrabarti** **(3) F Schmit** **(4) C L F Robinson** **(5) N Yazdanian** **(6) J P Leonard** **(7) I Black, S L Neilson, L I Kinghorn & C Williams**
Representative	**:**	**In person**
Property	**:**	**118 Gauden Road London SW4 6LU**
Tribunal Members	**:**	**Mr Charles Norman FRICS** **Valuer Chairman** **Ms Rachael Kershaw BSc**
Date of Decision	**:**	**2 December 2024**

DECISION

Decision

1. The application for dispensation from the consultation requirements in respect of works to remedy, and make good damage caused by, penetrating and rising damp, mould and fungal growth, is **GRANTED** unconditionally.

Reasons

The Applicant's Case

2. Application to the Tribunal dated 15 July 2024, was made for a dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") (set out in the appendix). The application related to repairs necessitated by penetrating and rising damp, mould and fungal growth.

3. The applicant's case was that the lounge in Flat A was currently affected by damp and mould and was verging on becoming uninhabitable. Also, the work needed to be completed as soon as possible to avoid worsening of existing damage. The applicant provided photographs from January 2024 showing clear evidence of damp. He also supplied a report on the damp from Ross Donnellan damp & timber specialist consultancy dated 17 January 2024. This identified the presence of rising and penetrating damp, and proposed solutions.

4. The applicant has obtained three quotations which appear to be (including any VAT) for £10,630, £8,600 and £13,848. The applicant supplied a bundle of 60 pages.

Directions

5. Directions were issued on 1 October 2024 that the matter be dealt with by written representations, unless any party made a request for an oral hearing, which none did. The directions required publicity to be given to the application in the block. The applicant confirmed that the application and directions had been sent to all lessees. In addition, lessees were invited to respond to the application.

The Property

6. From the application form and bundle, the property is a Victorian house over five storeys converted into eight flats.

The Leases

7. The Tribunal was supplied with a sample lease. However, the Tribunal makes no finding as to payability or reasonableness of the costs to be incurred as that is outside the scope of this application.

The Respondents' Case

8. There were no objections from any lessee.

The Law

9. Section 20ZA is set out in the appendix to this decision. The Tribunal has discretion to grant dispensation when it considers it reasonable to do so. In addition, the Supreme Court Judgment in *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 empowers the Tribunal to grant dispensation on terms or subject to conditions. In *Daejan* at para 46 Lord Neuberger stated "The Requirements are a means to an end, not an end in themselves, and the end to which they are directed is the protection of tenants in relation to service charges, to the extent identified above. …the Requirements leave untouched the fact that it is the landlord who decides what work needs to be done, when they are to be done, who they are to be done by, and what amount is to be paid for them."

Findings

10. There was clear evidence from the specialist damp report and contractors' quotes, of significant damp penetration in Flat A. The Tribunal considers that the applicant has acted reasonably in addressing a serious and urgent matter. There were no objectors. Therefore, the Tribunal grants dispensation unconditionally.

11. This application does not concern the issue of whether any service charge costs have been or will be reasonably incurred or are or be payable. The leaseholders continue to enjoy the protection of sections 19 and 27A of the Act. In summary, these provide that service charges are only payable for costs reasonably incurred (or to be incurred) and for work of a reasonable standard.

Mr Charles Norman FRICS 2 December 2024
Valuer Chairman

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

Appendix

Section 20ZA Landlord and Tenant Act 1985

(1)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 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.

(3)The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a)if it is an agreement of a description prescribed by the regulations, or

(b)in any circumstances so prescribed.

(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.

(6)Regulations under section 20 or this section—

(a)may make provision generally or only in relation to specific cases, and

(b)may make different provision for different purposes.

(7)Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.