

10439



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

**Case Reference** : LON/00BE/LDC/2014/0132

**Property** : SARAWAK COURT, CONSORT ROAD, LONDON SE15 3SS

**Applicant** : NOTTING HILL HOME OWNERSHIP

**Representative** : AMANDA CAMPBELL-YOUNG (Property Management Officer)

**Respondent** : VARIOUS LEASEHOLDERS (see list attached)

**Representative** : N/A

**Type of Application** : Dispensation from consultation requirements

**Tribunal Members** : Ms L Smith (Tribunal Judge)

**Venue of Deliberations** : 10 Alfred Place, London WC1E 7LR  
Decision on papers

**Date of Decision** : 24 November 2014

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Tribunal pursuant to section 20ZA of the Landlord and Tenant Act 1985 grants dispensation from the consultation requirements in respect of the works the subject of the application.

## **Procedural**

1. The applicant landlord applies for a dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 and the regulations thereunder in respect of works proposed to repair the roof in order to deal with water ingress ("the Works"). The Works are to be carried out to a property known as Sarawak Court, Consort Road, London SE15 3SS ("the Property"). The Property is made up of 26 residential flats and 2 commercial units. A list of the tenants of those flats and units features at pages 9-10 of the Applicant's bundle and is annexed to this decision.
2. The Tribunal gave directions on 13 October 2014, which provided for the Respondent tenants to write to the Tribunal by 28 October, stating whether or not they agreed to dispensation being given and whether they were content for the Tribunal to determine the matter on the papers. By letter dated 20 October 2014, the Applicant's representative confirmed that she had delivered by hand to each of the tenants a copy of the Directions and covering letter from the Tribunal with a copy of the application and an explanatory letter and a copy was also placed on the noticeboard in the entrance of the Property. The Applicant's representative has also indicated that she had provided updates to the tenants on 3 and 9 October (the latter communication also containing notice of intention and estimates in relation to the Works). She also held a meeting for tenants to discuss the Works on 13 October. Only the tenants of flats 4, 13, 19 and 21 attended.
3. The tenant of flat 24 responded to the Applicant's representative by e mail on 21 October noting his consent to the Works and that he was content to forego his right to be consulted (although he reserved the right to challenge the payability and reasonableness of the cost of the Works in due course). The tenant of flat 19 returned the form for leaseholders to the Tribunal on 26 October 2014 objecting to the dispensation application but indicating that he was content for the application to be determined on the papers and did not want a hearing. He noted that he would send written representations to the landlord and the Tribunal by 11 November 2014. None has been received. On 3 October 2014, he e mailed the Applicant's representative to clarify the estimates and seek information about guarantees and checking of the standard of the Works. That was on the same date as the application was made and therefore does not mention nor clarify the substance of his objection to dispensation.

purpose of consultation were sent respectively in February and August 2013. Those works were carried out between January and March 2014 but work to the roof could not be carried out at that time as the contractor (who was the contractor used by the building insurer to report on the roof defects) was not responding to the Applicant in relation to a start date.

8. A second contractor (Chris Ball Roofing) was approached thereafter and attended the Property in April 2014. That contractor provided a quotation which fell below the £250 per flat limit for consultation and accordingly no consultation was carried out for the Works. However, following a further period of delay whilst the scaffolding licence was obtained, the Works commenced on 2 October 2014. At that point, the contractor reported to the Applicant that it was not possible to scaffold the Property as initially intended and that the cost of the Works would increase as a result. That increase took the cost of the Works above the consultation limit. However, since the contractor had already started to erect the scaffolding and because of the delays up to that point, the Applicant decided to continue with the Works and to seek dispensation.
9. The Applicant did seek to partially comply with consultation by sending a notice of estimates on 9 October from the contractor carrying out the Works and the previous contractor. However, those were potentially misleading since the first contractor's quotation did not include for scaffolding costs which were the major part of the second contractor's quotation. It is to be noted also that by then the Works were underway and were completed on 28 October 2014 so that consultation had by that stage become pointless. As noted, one objection has been made in writing by the tenant of flat 19 which seems to be more concerned with the standard of workmanship and the obtaining of appropriate guarantees than whether dispensation should be granted. As noted above, he has not submitted written representations to the Tribunal in relation to dispensation.
10. I remind myself that the sole issue for my determination is whether the landlord should be required to carry a full section 20 consultation in respect of the works. Although the Tribunal notes that the problem which the Works seek to rectify has been apparent now for quite some time, at the point at which the application was made, there was an urgency created by the fact that the Works had already commenced and, if the Applicant had sought to stop the Works at that stage in order to consult, there would have been yet further delay and associated cost to the tenants. In my judgment the urgency of the problem is such that dispensation should be granted.
11. This does not leave the tenants without a remedy. If the cost of the works is excessive or if the quality of the workmanship poor, then it is open to the landlord or the tenants to apply to the Tribunal for a

determination of those issues. That, however, would be the subject matter of a separate application.

**Name:** Ms L Smith

**Date:** 24 November 2014

## 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.
- (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.