

10695



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

**Case reference** : **LON/00AW/LDC/2015/0028**

**Property** : **Edinburgh House, 56/57 Courtfield Gardens, London, SW5 0NF**

**Applicant** : **56/57 Courtfield Gardens Ltd**

**Representative** : **M Burrough**

**Respondent** : **The Lessees**

**Representative** : **In person**

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

**Tribunal members** : **Judge I Mohabir**

**Date and venue of hearing** : **18 March 2015  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **18 March 2015**

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**DECISION**

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## ***Introduction***

1. The Applicant makes an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for retrospective dispensation from the consultation requirements imposed by section 20 of the Act.
2. This application relates to the removal and replacement to the repair and reinstatement of the flat roof structure above Flat 5 in the building thereby requiring the works to be carried out on an urgent basis.
3. On 19 January 2015, Mr Steven Way BSc MRICS, a chartered Surveyor from the firm of Collier Stevens attended the property to inspect and advise upon decay uncovered during building work to Flat 5 affecting the flat roof structure above the flat. During the building works the removal of the ceiling exposed the structure of the flat roof to the rear. The flat roof also provides an external terrace to the lessee of Flat 8. Mr Way’s report is also dated 19 January 2015.
4. Mr Way found that the exposed structure is significantly affected by dry rot which has “*catastrophically damaged*” all of the joist ends, which have decayed. He also found that the right hand side of the roof is unsupported to its full length and the only structural support is provided by the plasterboard of the ceiling. Further decay has occurred to sections of the decking above flat roof, the timber wall plate and a timber lintol.
5. Mr Way concluded that, although the deterioration was old and not progressive, urgent and essential remedial work is necessary to reinstate and maintain the structural integrity of the building which is currently at risk. Failing this, he foresaw a total failure of the flat roof with the resultant risk to both persons and building, the risk to the users of the terrace at Flat 8 and possible outward movement to the flank wall of the rear elevation within Flat 5. The scope of the remedial work recommended by Mr Way is set out in a schedule of works dated January 2015.
6. On 20 January 2015, e-mails were sent to each of the leaseholders notifying them of Mr Way’s findings together with a copy of his report. The e-mail informed the lessees of the intention to make an application to dispense with need to carry out statutory consultation and to carry out the proposed remedial works as soon as possible. The lessees were also invited to say whether they objected to this course of action or not. Various, no objections were received and, indeed, those who replied were supportive of the steps proposed.
7. Consequently, on 19 February 2015 the Applicant made this application to the Tribunal seeking dispensation from the requirement to carry out statutory consultation under section 20 of the Act given the urgent nature of the remedial works.

8. On 2 March 2015, the Tribunal issued Directions and, given the risk to health and safety, abridged time for the lessees to respond to the application stating whether they objected to it in any way. No objection to the application has been received from any of them.

**Relevant Law**

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

**Decision**

10. The determination of the application took place on 18 March 2015 without an oral hearing. It was based solely on the statement of case and other documentary evidence filed by the Applicant.
11. The relevant test to be applied in 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.
12. The Tribunal granted the application for the following reasons:
  - (a) the urgency of the repairs.
  - (b) the fact that each of the leaseholders had been informed of the need to carry out the proposed remedial works and the reasons why.
  - (c) the fact that no leaseholder has objected to the proposed works and have accepted the need to do so on an urgent basis.
  - (d) the requirement in clause 4(2) of the residential leases requiring the landlord to carry out repairing obligations set out in the Sixth Schedule when required to do so.
13. The Tribunal, therefore, concluded that the Respondents had not been prejudiced by the failure to consult by the Applicant and the application was granted as sought.
14. It should be noted that in granting this application, the Tribunal does not also find that the scope and estimated or actual cost of the repairs are reasonable. It is open to any of the Respondents to later challenge those matters by making an application under section 27A of the Act should they wish to do so.

**Name:** Judge I Mohabir

**Date:** 18 March 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.