



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

Case reference : **LON/00BK/LDC/2015/0033**

Property : **14-20 Albany Court, Palmer Street,
London, SW1H 0AB**

Applicant : **Questing Ltd**

Representative : **Sterling Estates Management Ltd**

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
Mr K Cartwright FRICS
Ms J Dalal**

**Date and venue of
hearing** : **27 April 2015
10 Alfred Place, London WC1E 7LR**

Date of decision : **27 April 2015**

DECISION

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 proposed removal and replacement of the old calorifiers and to install a semi-instantaneous calorifier. The basis on which dispensation is sought is that the proposed works are needed in order to prevent legionella disease.
3. The subject property receives all of its hot water and heating through a communal boiler system, which also serves a neighbouring and separate block known as North Block, flats 1-12 Albany court.
4. Apparently, the repairs to the communal boiler system were carried out in or about December 2014 by contractors known as “Coolex”.
5. By a letter dated 17 December 2014, Coolex found that, although there had been a significant improvement in the hot water temperature as a result of the repairs, the temperature was still too low as a result of the coils being internally fouled and partially blocked and needed to be replaced. As a consequence, there is a risk of legionella during demand. The estimated cost of the repair work was placed at £11,620 plus VAT.
6. By an e-mail dated 15 January 2015, Sterling Estates Management Ltd, the managing agent wrote to each of the leaseholders advising them of the need and scope of the proposed work. It also advised them that it proposed to make an application to the Tribunal to dispense with the statutory consultation required by section 20 of the Act given the urgency of the work.
7. On 18 March 2015, the Tribunal issued Directions requiring any lessee who opposed the application to respond to the application stating why it was being opposed. No objection to the application has been received from any of them. Indeed, the only response received was from the lessees of Flat 19, who positively supported the application and nominated Coolex as the contractor.

Relevant Law

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

Decision

9. The determination of the application took place on 27 April 2015 without an oral hearing. It was based solely on the statement of case and other documentary evidence filed by the Applicant.

10. 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.
11. The Tribunal considered the application to be premature and possibly unnecessary. The application was received by the Tribunal on 17 December 2015. As long ago as January 2015, the Applicant's representative was aware of the need to carry out the proposed work. It could have commenced the statutory consultation process and possibly completed this by the time this application fell to be determined. However, on balance, the Tribunal granted the application for the following reasons:
 - (a) the apparent 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 to refuse the application may result in financial prejudice to the leaseholders by the estimate provided becoming out of date if the Applicant was required to undertake statutory consultation.
12. 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.
13. 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: 27 April 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.