

11858



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

Case reference : **LON/00AW/LDC/2016/0072**

Property : **35-49 Queens Gate Terrace,
London, SW7 5PN**

Applicant : **35-49 Queens Gate Terrace Ltd**

Representative : **Castlereagh Management**

Respondent : **The Lesees**

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**

**Date and venue of
determination** : **12 September 2016
10 Alfred Place, London WC1E 7LR**

Date of decision : **12 September 2016**

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 need to carry out remedial structural repairs between the ceiling of Flat 9 and the floor of Flat 11 at 35-49 Queens Gate Terrace (“the property”).
 3. The property consisted of 9 bedroom properties of five stories above a basement occupied from 1858. 37-41 Queens Gate Terrace were converted to become the South Kensington Hotel, which opened in 1864 and continued until 1954. Thereafter, it was converted into flats. During the conversion an additional floor was added.
 4. During alteration works to Flat 9, structural defects were found between the ceiling of that flat and the floor of flat 11 above. This has resulted in cracking to the ceiling of Flat 11.
 5. A structural engineers report prepared by Richard F Gill & Associates dated 8 June 2016 concluded that a timber truss spanning from the front elevation to the rear partition on the second and third floors of the property has at some point in the past been “butchered” and is unable to support the load now placed on it. This has led to a sloping floor in Flat 11.
 6. A further report prepared by Croft Structural Engineers dated 21 June 2016 sets out two possible means by which the required remedial structural repairs can be carried out. These are:
 - (a) to follow the existing load paths from previous alterations but to strengthen the floor joists to be capable of carrying the loads from above.
 - (b) the secondary truss will be replaced with a strengthened beam most probably a flitch beam.
 - (c) the flitch will need to sit on a post within the wall.
 - (d) the original 75mm x 300mm deep joists will be strengthened within the floor to carry the load back to the masonry walls.
- OR
- (e) strengthen the corridor walls running left to right, to carry the load between the brick Party walls and the central spine walls, as indicated on drawings made, as agreed with Richard F Gill & Associates. It seems that this course of action is preferred by both firms of engineers.

7. Three quotations have been obtained for the proposed remedial works. The Tribunal is not concerned with the estimated cost of the works for the purpose of this application.
8. On 5 August 2016, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. The Tribunal also directed that this application be determined on the basis of written representations only.
9. No objection to the application has been received from any of the Respondents.

Relevant Law

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

Decision

11. The determination of the application took place on 12 September 2016 without an oral hearing. It was based solely on the statement of case and other documentary evidence filed by the Applicant. No evidence was filed by any of the Respondents.
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 prejudice in this way.
13. The Tribunal granted the application the following reasons:
 - (a) the fact that each of the leaseholders had been informed of the need to carry out the proposed remedial works and the reasons why at the relevant time.
 - (b) the fact that no leaseholder has objected to the proposed works and appear to support the application.
 - (c) that carrying out the additional works at the same time provided a cost saving to the leaseholders by preventing further potential damage from being caused to the building.
 - (d) Flat 9 cannot be occupied until the proposed works are complete.
 - (e) importantly, any 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 estimated or actual costs incurred.

14. The Tribunal, therefore, concluded that the Respondents would not be prejudiced by the failure to consult by the Applicant and the application was granted as sought.
15. It should be noted that in granting this part of the 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: 12 September 2016

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.