

12673



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

Case reference : **LON/00AG/LDC/2018/0043**

Property : **58 Fitzjohns Avenue, London NW3
5LT**

Applicant : **58 Fitzjohns Avenue Ltd**

Representative : **Written Application by Salter Rex
(As managing agent)**

Respondent : **6 leaseholders (and members of the
freehold company)**

Representative : **Not represented**

Type of application : **Application for dispensation from
consultation requirements under
s20ZA of the Landlord and Tenant
Act 1985**

Tribunal members : **Mr A Harris LLM FRICS FCI Arb**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **21 March 2018**

DECISION

Decisions of the tribunal

1. The tribunal grants dispensation from the consultation requirements under s20 ZA of the Landlord and Tenant Act 1985.

The application

2. The Applicant seeks dispensation from the consultation requirements under s20ZA of the Landlord and Tenant Act 1985.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. A written application was made by Salter Rex as managing agent on behalf of 58 Fitzjohns Avenue Ltd, a company owned by the six leaseholders.
5. A bundle of correspondence and documents was supplied to the tribunal.

The background

6. The property which is the subject of this application is a property which has been converted into six flats. Water damage appears to have occurred to flat 1 as a result of a leaking roof. Works are required to repair the leak as a matter of urgency. Dispensation is sought from the consultation requirements of section 20 of the Landlord and Tenant Act 1985 in order to allow the works to proceed.
7. A copy of the lease for flat one has been supplied in the bundle and the lease is for a term of 125 years from 29 September 1991 with a ground rent and service charge payable. The landlord is responsible for keeping the external walls, load-bearing walls, girders, timbers, roof and chimney stacks and exterior of the building in good and substantial repair subject to payment of the service charge.
8. Notice of the proposed works has been given to the lessees. Three estimates were obtained for carrying out repairs and details of the proposed works and cost was supplied to each of the lessees but not as a formal consultation under section 20. Five leaseholders have indicated their agreement to the proposed works with the remaining leaseholder questioning whether the works for within the landlord's repairing obligations. The reason for the doubt is that works were carried out to flat 1 by a previous leaseholder which were validated by a retrospective

licence. An undated copy of that license is included in the bundle which does not appear to modify the repairing obligations of the landlord.

9. The relevant repairs fall under the Landlord's repairing obligations.

The tribunal's decision

10. The tribunal grants dispensation from the consultation requirements of under s20 ZA of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.

Reasons for the tribunal's decision

11. The works are required to ensure the watertight integrity of the building is maintained. The tribunal is satisfied that the works are required urgently to avoid further damage.
12. The tribunal is satisfied that the six leaseholders as directors and members of the freehold company are aware of the works required and the majority have agreed to them. The consultation requirements are to ensure that leaseholders are aware of proposed work and given an opportunity to nominate contractors and comment upon the estimates. Questions of whether the proposed service charge is payable under the terms of the lease are outside the scope of the consultation process should be the subject of an application under section 27 of the Act. This would be so even if a formal consultation had been carried out.
13. The tribunal considers that there is no prejudice to the leaseholders in granting dispensation.
14. The tribunal is satisfied that dispensation should be granted.

Name: A Harris LLM FRICS FCI Arb **Date:** 21 March 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal 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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

S20 Limitation of service charges: consultation requirements

- (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) a leasehold valuation 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.^[FN1]

[FN1] ss.20-20ZA substituted for s.20 subject to savings specified in SI 2004/669 art.2(d)(i)-(vi) by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 151

S20ZA Consultation requirements: supplementary

- (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.[...] [FN1]

[FN1] ss.20-20ZA substituted for s.20 subject to savings specified in SI 2004/669 art.2(d)(i)-(vi) by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 151