



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

**Case reference** : **LON/00AZ/LDC/2019/0146**

**Property** : **351-355 Sydenham Road,  
Sydenham, London SE26 5SL**

**Applicant** : **DEP Limited**

**Representative** : **Sarah Bell, Acorn Estate  
Management**

**Respondents** : **Flat 1: Ms Jennifer Pass  
Flat 2: Mr Dominic Ngo & Miss  
Yvonne Ngo  
Flat 3: Miss Makeda Latouche  
Flat 4: DEP Ltd [not yet sold]  
Flat 5: Mr Elliot Franklin D'Agular  
& Ms Antonia Georgina Juliana  
Stephenson  
Flat 6: Ms Shreyas Sathyakumar  
Flat 7: Alex Ickringill & Ms Sarah  
True  
Flat 8: Mr Stuart Lundy  
Flat 9: Mr Andrew McBrick & Ms  
Charlotte Dunn**

**Representative** : **None**

**Type of Application** : **Dispensation of statutory  
consultation requirements under  
s.20ZA Landlord & Tenant Act 1985**

**Tribunal member(s)** : **Judge N Rushton QC, BA (Law);  
LLM  
Mr P Roberts DipArch RIBA**

**Date and venue of  
hearing** : **7 October 2019 at 10 Alfred Place,  
London WC1E 7LR**

**Date of decision** : **7 October 2019**

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## **DECISION**

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### **Decision of the tribunal**

- (1) Dispensation is granted pursuant to section 20ZA of the Landlord & Tenant Act 1985.

### **The application**

1. The Applicant is the freeholder and the landlord of 9 flats at 351-355 Sydenham Road, Sydenham SE26 5SL (“the Property”). The Respondents are the leaseholders. The Applicant's representative, Sarah Bell of Acorn Estate Management, manages the building.
2. The Applicant seeks dispensation pursuant to Section 20ZA of the Landlord & Tenant Act 1985 ('the Act') in respect of consultation requirements in relation to certain 'Qualifying Works' (within the meaning of the Act).
3. The Qualifying Works comprise the replacement of 2 sump pumps, including provision of a tanker to remove excess waste from the pump pit.
4. The Tribunal notes from a letter from Ms Bell dated 2 October 2019 updating the Tribunal that the Applicant has now agreed with the Respondents that it will first attempt to repair the existing pumps, but that the repair may be unsuccessful. The Tribunal further notes that the repair quote falls below the consultation threshold for Section 20ZA (the threshold being £2,250 as there are 9 flats). However, if the repair is unsuccessful and the pumps still require replacement, then dispensation would still be required.

### **Paper determination**

5. The Application is dated 23 August 2019 and was received by the Tribunal on 27 August 2019. Directions were issued on 3 September 2019 requiring the Applicant to send each of the leaseholders copies of the application form and the directions and to display a copy of the same in a prominent place in the common parts of the Property. By a letter of 5 September 2019, Ms Bell confirmed that this had been done.

6. The directions provided that any leaseholders who opposed the application for dispensation should respond on the reply form and send a statement in response with any documents relied on by 17 September 2019. No responses and no objections have been submitted by the Respondents.
7. The directions also provided that the Tribunal would determine the application on the basis of written representations unless any request for an oral hearing was received by 10 September 2019. No such request has been received. This application has therefore been determined by the Tribunal on the papers supplied by the Applicant, including the bundle of relevant documents which the Applicant has provided.
8. The directions make it clear that the Application does not concern the issue of whether any service charge costs resulting from any of the proposed works are reasonable or payable.

### **The law**

9. Section 20ZA of the Act, subsection (1) provides as follows:

*'Where an application is made to a 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.'*

10. The Supreme Court in the case of *Daejan Investments v Benson and others* [2013] UKSC 14 set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of section 19 to 20ZA of the Act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate, went on to state *'it seems to me that the issue on which the [tribunal] should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements'*.

### **Findings of fact**

11. The Application gives the following reasons for seeking dispensation: as at 23 August 2019, the pumps had not worked for around 2 months and required urgent replacement before waste backed up into the flats or the pit overflows.
12. Formal consultation was not carried out. However on 12 August 2019 Ms Bell sent a letter to each of the leaseholders (copy within the bundle) stating that the pumps were broken and non-operative and the

landlord was having to undertake their immediate replacement. The letter stated this would be an additional charge to the service charge and the landlord would be making the present application to the Tribunal for dispensation. Two quotes had been obtained for (a) replacing the pumps, from Drainex and Home Counties Basements (“HCB”) and (b) providing a tanker to drain the pump pit, from Quality Drainage and AllType Pumps. The Applicant was proposing to proceed with the lowest of each pair of quotes, which were HCB and AllType Pumps, at a total cost of £2,820 including VAT, plus £100 fee for application for dispensation.

13. Email responses were received by Ms Bell and have been included in the bundle from: Ms Jennifer Pass (Flat 1), Makeda Latouche (Flat 3), Sara True and Alex Ickringill (Flat 7), Stuart Lundy (Flat 8) and Charlotte Dunn and Andrew McBrick (Flat 9). Those responses all concern the necessity for the works, the choice between repair and replacement, the allocation of the costs and/or the need for an additional service charge. The responses do not therefore raise any issues of potential prejudice from any failure to comply with the consultation requirements by the Applicant. The majority of the responses preferred the option of repair, which would be cheaper than replacement if successful.
14. Included in the papers supplied is an email from Paul Morgan of AllType Pumps dated 19 August 2019 in which he advised that he had attended the Property that day, found both sewage pumps working and had pumped out the chambers with the aid of a roadside tanker. He recommended a major service on the pumps and gave a quote for that work of £1,240 plus VAT.
15. The Tribunal notes that the Applicant first intends to carry out repair works, the cost of which will be under the consultation limit.
16. The Tribunal is satisfied that if those repairs are unsuccessful and the pumps require replacement, then those replacement works will be necessary and would be urgent having regard to the likely effect on the flats and leaseholders if the sewage pumps are non-operational and in particular if waste begins to back up. In the absence of any submission from any Respondent objecting to the replacement works, the Tribunal found no evidence that the Respondents would suffer prejudice if dispensation were to be granted.

### **Determination**

17. In the circumstances set out above, the tribunal considers it reasonable to dispense with consultation requirements. Dispensation is granted pursuant to section 20ZA of the Landlord & Tenant Act 1985.

18. This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act as to the reasonableness and standard of the work and/or whether any service charge costs are reasonable and payable.

**Name: Judge N Rushton QC,  
Tribunal Judge**

**Date: 7 October 2019**

### **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).