



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

**Case reference** : **LON/00BK/LDC/2019/0148**

**Property** : **113-115 Gloucester Terrace, London, W2  
3HB**

**Applicant** : **Dachele Investments Limited**

**Representative** : **Ms Jane Wingrove, Managing Agent**

**Respondents** : **The Leaseholders**

**Representative** : **Ms Oxana Wallis (on behalf of GFF, 113  
Gloucester Terrace)**

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

**Tribunal member** : **Tribunal Judge I Mohabir**

**Date and venue of  
determination** : **9 October 2019  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **9 October 2019**

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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 dispensation from the consultation requirements imposed by section 20 of the Act.
2. 113-115 Gloucester Terrace, London, W2 3HB (“the property”) is described as a Georgian terraced building converted into 11 residential flats.
3. Historically, the flats had been served by two galvanised water tanks located separately in the left and right hand loft spaces (as one looks at the property) in each of the buildings. They were each supported by a V-shaped timber beam arrangement.
4. Apparently, in or about May or June 2019, the tank in the left hand loft space developed a leak, which caused water ingress to Flat 5. Therefore, the Applicant installed 6 new plastic water tanks to replace the galvanised tanks. The galvanised tank in the left hand loft space was disposed of and the tank in the right hand loft space was decommissioned and left in situ.
5. All of the new plastic water tanks were located in the left hand loft space. Three of these were located directly on to the original load bearing structure and the remainder were on a new timber structure that had been built to extend the load bearing platform.
6. However, subsequently stress cracks appeared to the plaster ceiling in Flat 6. The Applicant’s concern was that the weight of the new water tanks was placing excessive loading on the ceiling joist to the flat below which resulted in the cracking. It, therefore, instructed the firm of True Associates Limited, Chartered Surveyors to investigate the matter.
7. True Associates carried out an inspection on 17 July 2019. In its report dated 18 July 2019, True Associates noted that the top floor flats (Flats 5 and 6) had been created out of the Mansard roof structure and did not benefit from load bearing walls to the front and rear elevations. The only load bearing walls are the left and right hand party walls. The report goes on to conclude that the works required to create adequate structural support would be difficult and costly and was discounted for these reasons.
8. Importantly, in the context of this case, the report went on to cast doubt the existing load bearing arrangements would prove satisfactory if engineering calculations were carried out. Therefore, it was recommended that three of the water tanks should be relocated into the right hand loft space by creating a small access hole in the party wall brickwork to allow the tanks to be passed through and for easy access for future maintenance using the loft hatch in the communal landing area rather than through Flat 5.
9. Following the recommendation in the report, the Applicant decided that the proposed work was urgent and it should be proceeded with without carrying out statutory consultation under section 20 of the Act. Two estimates were obtained from contractors and the lowest one provided by Lexa Construction

Limited in the sum of £11,160 including VAT was accepted. The works commenced on 22 July and was completed on 7 August 2019.

10. On 20 August 2019, the Applicant made this application seeking retrospective dispensation from the requirement to carry out statutory consultation in relation to the completed works.
11. On 4 September 2019 the Tribunal issued Directions. Only one objection was received to the application. This was from Ms Wallis made on behalf of her daughter who is the leaseholder of the ground floor flat at 113 Gloucester Terrace.

### ***Relevant Law***

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

### ***Decision***

13. The hearing took place on 9 October 2019. The Applicant was represented by Ms Wingrove who is the former managing agent. She confirmed that she had authority to represent the Applicant at the hearing because she commissioned and supervised the works. Ms Wallis appeared in person on behalf of her daughter.
14. In submissions, Ms Wingrove confirmed the nature and urgent need to carry out the works, as set out above.
15. Ms Wallis accepted that the works were necessary. However, her objection was that the works were not urgent for two reasons. Firstly, there was no leak to the new water tanks and this was a misrepresentation by the Applicant. Secondly, the True Associates report did not conclude that the works were urgent. For these reasons she said that the leaseholders had been prejudiced by failing to have been deprived of the opportunity to make representations in relation to the work that was carried out.
16. 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.
17. The issue before the Tribunal was whether dispensation should be granted in relation to requirement to carry out statutory consultation with the leaseholders regarding the flat roof replacement. It should be noted that the Tribunal is not concerned about the actual cost that has or will be incurred, as that is not within the scope of this application.
18. The Tribunal granted the application the following reasons:

- (a) there had been no misrepresentation by the Applicant that the new water tanks had leaked. The Tribunal was satisfied that the reference to a leak in the application was in relation to the need to replace the old galvanised water tank in the left hand loft. This was clarified by Ms Wingrove at the hearing.
  - (b) as to the urgency of the works, it was correctly submitted that the True Associates report did not expressly state that the works were urgent. However, it is reasonably clear from the findings made in the report about the inadequacy of the load bearing arrangements to infer that the works should be carried out sooner rather than later. The Tribunal was mindful of the fact that the cracking found in the ceiling of Flat 6 had occurred shortly after the new water tanks had been installed. This revealed a real and present risk of further structural deterioration and possible harm to the occupant of Flat 6. On balance, therefore, the Tribunal was satisfied that the works could be considered as being urgent and that the Applicant had acted appropriately by seeking to have them carried out without firstly undertaking statutory consultation.
  - (c) importantly, any real 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 actual costs incurred.
19. The Tribunal, therefore, concluded that the Respondents had not be prejudiced by the failure to consult by the Applicant and the application was granted as sought.
20. It should be noted that in granting this part of the application, the Tribunal makes no finding that the scope and estimated 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 in the event that this becomes necessary.
21. Finally, the Applicant is directed to send a copy of this decision to each of the leaseholders within 7 days of it being issued by the Tribunal.

**Name:** Tribunal Judge I  
Mohabir

**Date:** 9 October 2019

## **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.