



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

Case Reference: LON/00BK/LDC/2020/0202 P

HMCTS code: P: PAPERREMOTE

Property: 34 Ennismore Gardens, London SW7
1AE

Applicant: 34 Ennismore Gardens Limited

Representative : Darcy Property Management Limited

Respondents: The lessees of Flats 1 to 9 named in the
application

Representative: None advised

**Type of
Application:** To dispense with the statutory
consultation requirements under
section 20ZA Landlord and Tenant Act
1985

**Tribunal
members:** Judge Pittaway
Mr R Waterhouse BSc MA LLM FRICS

Date of decision: 18 December 2020

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the applicant and not objected to by any respondent. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper. The documents to which the tribunal was referred are in an electronic bundles of 276 pages (consisting of the application, the Directions issued by the tribunal dated 17 November 2020 and copies of the respondents' leases) and e mails dated 23 November 2020 and 16 December 2020 from Darcy Residential. The decision made is set out below.

DECISION

The Tribunal grants the application for dispensation from statutory consultation in respect of the subject works, namely localized repairs to the roof of the Property, window repairs to the top floor of the Property, to the extent that these are the responsibility of the applicant under the terms of the lease of the top floor flat, and relevant associated building works.

The applicant should send a copy of this decision by e mail, hand delivery or first class post to each of the respondents and display a copy in a prominent position in the common parts of the Property, together with an explanation of the leaseholders' appeal rights within seven days of receipt.

This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonableness and/or the cost of the work.

The Application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the **Act**") for dispensation from consultation in respect of the repairs to the roof of the Property. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if the landlord plans to carry out qualifying works which would result in the contribution of any tenant being more than £250. The works are identified in the application as 'Localised repairs to the roof identified by the surveyor and window repairs to the top floor. Relevant associated building works.' The cost of the works the subject of the application exceed £250, as the preliminary estimate of the cost of the works is £25,000, including VAT and professional fees.
2. By directions dated 17 November 2020 (the "**directions**") the tribunal directed the applicant send each of the leaseholders the application and the tribunal's directions and display the same in the common parts of the Property, confirming to the tribunal that it had done so. The applicant confirmed to the tribunal on 23 November 2020 that it had complied with this direction on 20 November 2020.

3. The directions required any leaseholder who opposed the application should tell the tribunal. If they opposed the application they should send the tribunal and the applicant's representative a statement responding to the application together with any documents they wished to rely on. The tribunal has received no such statements of objection/ support and the applicant confirmed to the tribunal that it received no replies from any of the leaseholders.
4. The directions provided that the tribunal would decide the matter on the basis of written submissions unless any party requested a hearing. No such request has been made.

The applicant's case

5. The Wellcome Trust is the owner of the Property. The applicant is the intermediate lessee of the Property, acting by its agent Darcy Property Management Limited. The respondents' leases all contain a covenant by their landlord to repair the structure of the Property (as defined and excluding any area demised under any lease) and for the lessee to contribute to the cost of the repair.
6. In its application the applicant explained that the Property is a seven floor residential building, including a lower ground floor, comprising nine flats.
7. The applicant further states in its application that a specification of works was prepared by the applicant's surveyor in October 2020 and the works were included the 2020 Capital Expenditure plan. The applicant intended to commence the section 20 consultation in October 2020 and complete the works in spring 2021. Covid-19 and lockdown have resulted in delays to the start of the process. The application states that the consultation has not commenced and cannot be completed before serious damage is caused to the flats in the Property. The rainwater leaks from the roof have increased and the applicant considers it does not have time to complete the statutory consultation.
8. The applicant considers the works to be urgent as if the repairs are delayed the insurance of the building might not cover further damage and might cancel the insurance policy.

The Respondents' case

9. No respondent objected to the application

Determination and Reasons

10. Section 20ZA(1) of the Act provides:

“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.”

11. The whole purpose of section 20ZA is to permit a landlord to dispense with the consultation requirements of section 20 of the Act if the tribunal is satisfied that it is reasonable for them to be dispensed with.
12. The Tribunal has taken account the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 in reaching its decision.
13. There is no evidence before the tribunal that the respondents will be prejudiced by the failure of the applicant to comply with the consultation requirements. The tribunal is therefore satisfied that it is reasonable to dispense with all or any of the consultation requirements in relation to the repair works
14. The dispensation only applies to qualifying works the cost of which is covered by the service charge. The tribunal notes that the lease of Flat 6 (which is stated to be on the fifth floor) does not include as part of the demised premises the window frames of the flat, although a number of the other leases do demise the window frames. The tribunal does not know whether Flat 6 is the top floor flat to which window repairs are proposed, nor to what part of the windows work is required. It has therefore limited its dispensation to window repairs to the top floor of the property, to the extent that these are the responsibility of the applicant.
15. Whether the works are carried out to a reasonable standard and at a reasonable cost are not matters which fall within the jurisdiction of the tribunal in relation to this present application. This decision does not affect the tribunal’s jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonableness and /or cost of the works.

Name: Judge Pittaway Date: 18 December 2020

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.

3. 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.

4. 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.