



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

Case Reference : **LON/00BJ/LDC/2021/0088**

HMCTS Code : **P: PAPER REMOTE**

Property : **10-12 Southcroft Road, Tooting,
London SW17 9TR**

Applicant : **Together Property Management
Ltd, representing Southern Land
Securities Ltd**

Respondent : **Leaseholders of the property**

Type of Application : **Dispensation from consultation
requirements under Landlord and
Tenant Act 1985 section 20ZA**

Tribunal Members : **Judge Professor R Percival**

Venue : **Remote paper determination**

Date of Decision : **7 June 2021**

DECISION

Decisions of the tribunal

- (1) The Tribunal pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) grants dispensation from the consultation requirements in respect of the works the subject of the application.

Procedural

1. The landlord submitted an application for dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 and the regulations thereunder in respect of the replacement of a boiler flue and associated works. The application is dated 12 March 2021.
2. The Tribunal gave directions on 19 April 2021, which provided for a form to be distributed to those who pay the service charge to allow them to object to or agree with the application, and, if objecting, to provide such further material as they sought to rely on. The application and directions was required to be sent to the leaseholders and any sublessees, and to be displayed as a notice in the common parts of the property. The deadline for return of the forms, to the Applicant and the Tribunal, was 14 May 2021.
3. The Applicant confirmed that the relevant documentation had been hand delivered, and posted as notices, as required by the directions in time.
4. No such response has been received by the Tribunal. Although the Applicant has not confirmed that it has not received replies, I assume that that is the case.

The property and the works

5. The property is described as a mid-terraced Victorian house converted into two# flats.
6. The applicant managing agent was alerted to water ingress in flat 10 in October 2019, and, after some difficulty contacting the ground floor flat, number 12, roof repairs were made. The statement of case indicates that the costs of scaffolding alone exceeded the threshold for consultation under section 20 of the 1985 Act. The work undertaken at that time was completed in January 2020. According to the Applicant’s statement of case, “[t]he water ingress seemed to continue”, and in the summer of 2020 a surveyor was instructed. He or she “confirmed that the work carried out to the roof was fine”, but recommended further work in the loft space. The surveyor’s report suggests that continuing

water ingress problems was most likely caused by the presence of hygroscopic salts in the plaster of a chimney breast.

7. The application form (dated March 2021) contains two lists of works. The first relates to the initial roof repairs, which the application form states has been completed. The second sets out the works recommended by the surveyor. The heading (“Surveyors recommendation that now needs to be carried out”) suggests that at that time, this work had not been carried out. In the bundle, there are invoices for the original building work (£2000) and the surveyor’s fees (£420). In respect of the work recommended by the surveyor, there is an estimate (dated 16 April 2021, for £225 plus VAT) for the first stage (removing damp-damaged plaster), but not the remainder of the work (which includes applying a salt neutralised to the dried out wall, a sika waterproof scratch and a final coat). The surveyor’s recommendations refer to two separate points at which plaster should be removed, and it is not clear from the material in the bundle whether the work already carried out relates to both (in part, in one case – see above). The undated statement of case in the bundle, presumably prepared after the directions, states that “the works” have now been completed. The implication seems to be that this applies to all of the works recommended by the surveyor. The surveyor’s report is itself undated. The surveyor’s invoice is dated 25 March 2021, after the application was made. The surveyor inspected in August 2020 and again in December 2020.
8. Apart from the invoices referred to above, there are no final figures for the cost of all the works, or an estimate thereof, available.

Determination

9. The Tribunal is concerned solely with an application under section 20ZA of the 1985 Act to dispense with the consultation requirements under section 20 of the same Act.
10. I accept that there was a clear element of urgency in carrying out the original repairs to the roof in the winter of 2019/20. While there are some surprisingly long time gaps in the narrative outlined above, it can also be argued that, depending on the true date of the receipt of the surveyor’s report, the additional work was also urgent.
11. I am satisfied that the two sets of work can properly be considered in a single section 20ZA application. Although, had consultation taken place before the first works, it would not, of course, covered the second, it is appropriate to consider both together when determining a retrospective application for dispensation. To do otherwise would be artificial and unnecessary.

12. No responses have been received from either of the leaseholders. It is therefore clear that no leaseholder has sought to claim any prejudice as a result of the consultation requirements not having been satisfied. Where that is the case, the Tribunal must, quite apart from the urgency adverted to above, allow the application: *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854.
13. This application relates solely to the granting of dispensation. If the leaseholders consider the cost of the works to be excessive or the quality of the workmanship poor, or if costs sought to be recovered through the service charge are otherwise not reasonably incurred, then it is open to them to apply to the Tribunal for a determination of those issues under section 27A of the Landlord and Tenant Act 1985.

Name: Judge Prof Richard Percival **Date:** 7 June 2021

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, 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.