



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

Case reference	:	LON/00AG/LDC/2022/0076
HMCTS code (paper, video, audio)	:	P: PAPERREMOTE
Property	:	Flats 1-5, St Johns Lodge, Harley Road, Swiss Cottage, London, NW3 3BY
Applicant	:	St Johns Lodge Ltd
Representative	:	St Johns Lodge Ltd (As managing agent)
Respondent	:	Mr H Chandaria – Flat 1 Mr J Clarke – Flat 2 Mr N Coburn & Ms F Coburn- Flat 3 & 4 Ms T Tricot -Flat 5
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	:	8 August 2022

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was P:PAPERREMOTE,. A face-to-face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined on paper. The documents that the tribunal was referred to are in a bundle of 52 pages, the contents of which have been noted. The order made is described at the end of these reasons.

Decision of the tribunal

1. The tribunal exercises its discretion to grant dispensation from the consultation requirements of s20ZA in respect of the works required to investigate the cause of and remedy falling masonry from the soffit of part of the eaves and make the area safe.

The application

2. The Applicant seeks dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) in respect of works required initially investigate the cause of the falling masonry. A further estimate will follow once investigations have been made.
3. Directions were made on 25 May 2022 for a paper determination in the week commencing 18 July 2022. The bundle was not submitted in time for that date which was vacated and a notice of intention to strike out was issued unless the bundle was filed by 18 July 2022. The bundle was filed in time and the case relisted for this decision. The only issue for the tribunal is whether it is reasonable to dispense with the statutory consultation requirements. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

The hearing

4. A written application was made by HML Group, the managing agents of the property. The case was decided on paper and no appearances were made. The tribunal considered the written application form, copy letters to the leaseholders, estimates and a specimen lease included in the bundle. The total cost of the works for which dispensation is sought was £2136.00 including VAT.

The background

5. The property which is the subject of this application is a converted Victorian house and consists of 5 units over 4 floors, lower ground, ground, first and second floors. The date of conversion is not known.

6. A specimen lease has been provided showing the scope of the works is within the service charge provisions of the lease. A list of leaseholders has been provided with confirmation from the agents that they have been notified of the proposed works. No representations have been received objecting to the application as to the scope of the works or appropriateness of the application.

The tribunal's decision

7. The tribunal exercises its discretion to grant 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

8. The works are required to make safe falling masonry from the soffit of the eaves and investigate the cause of the failure as a first stage in carrying out permanent repairs. Dispensation from the consultation requirements of section 20 was requested.

9. The tribunal is satisfied that the leaseholders are aware of the works required and none have objected.

10. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs. (1) 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*” (emphasis added).

11. The Tribunal understands that the purposes of the consultation requirements is to ensure that leaseholders are given the fullest possible opportunity to make observations about expenditure of money for which they will in part be liable. The test laid down by the Supreme Court in *Daejan v Benson* is whether the leaseholders would suffer prejudice if the application were to be granted and a full consultation not carried out.

12. The tribunal considers that there is no prejudice to the leaseholders in granting dispensation as the works are urgently needed to make the building safe and leaseholders have been consulted.

13. The tribunal is satisfied the works were urgent and that dispensation should be granted.

Name:	Mr A Harris LLM FRICS FCI Arb Valuer Chair	Date:	8 August 2022
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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.

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

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