



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

**Case Reference** : **LON/00AG/LDC/2022/0122**

**Property** : **3A Downshire Hill, NW3 1NR**

**Applicant** : **Proper Proper T Ltd**

**Respondent** : **(1) Ms J Weiss  
(2) Ms A Fielding  
(3) Mr P Savona**

**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** : **6 September 2022**

---

**DECISION**

---

## **Decisions of the tribunal**

- (1) The Tribunal, pursuant to section 20ZA of the Landlord and Tenant Act 1985, grants dispensation from the consultation requirements in respect of the works the subject of the application, on condition that the Applicant contribute £5,000 towards the cost of the works.

## **Procedural**

1. In this decision, “the consultation requirements” has the same meaning as in section 20ZA(4) of the Landlord and Tenant Act 1985 (“the 1985 Act”).
2. The landlord submitted an application for dispensation from the consultation requirements dated 20 June 2022.
3. The Tribunal gave directions on 29 June 2022. The application was listed for paper determination.
4. The directions provided for a form to be distributed to those who pay the service charge to allow them to object to or agree with the applications, and, if objecting, to provide such further material as they sought to rely on. The deadline for return of the forms, to the Applicant and the Tribunal, was 20 July 2022.
5. The Applicant confirmed that the relevant documentation had been sent as required by the directions.
6. No response from a leaseholder has been received by the Tribunal.

## **The property and the works**

7. The property is a building with mixed commercial and residential use. There is an office on the ground floor and two flats (described as “mezzanine flats”) above. Those flats are numbers 3 and 4. The leasehold interest in the residential part of the building as a whole (that is, the flats, not the common parts) is owned by the first and second Respondents, jointly and severally. Under that head lease, separate leasehold interests have been let to the first Respondent in respect of flat 3 and the second Respondent in respect of flat 4.
8. Flat 2 is contained within number 2A Devonshire Hill, but access to the flat is by a staircase and common parts within number 3A. The third Respondent holds that leasehold, which includes the right to use the number 3A stair and common parts. There is, the Applicants say, a

corresponding obligation in that lease to contribute to the service charge.

9. The works have now been completed. The works consist of an extensive list of individual items relating to fire safety to be undertaken (as I understand it) exclusively in respect of the common parts. I note that the application includes works to the front doors of the flats, and it is not entirely clear from the lease and underlease provided whether the doors were demised or not. Given the context of this application, however, it can be assumed that the Respondents have accepted that fire safety related works to the flat doors are properly the responsibility of the Applicant. None of them have questioned the works in this (or any other) respect; which is not surprising given the interrelationship between the common parts HMO and those in respect of each flat (see below). It is presumably in the interests of the leaseholders for the works to be carried out as they have been.
10. The purpose of the works is primarily to satisfy the conditions placed on an HMO licence issued by the London Borough of Camden on 21 October 2021 in respect of the common parts. The Applicant had also commissioned a fire risk assessment, although it appears that, record keeping aside, which I assume is not part of the “works” strictly speaking, the FRA requirements specified were also covered by the HMO licence conditions.
11. The sequence of events in terms of the use of the residential parts of the property is not entirely clear on the papers, although the Applicant relates that “[t]he process of seeking the HMO licence was triggered by a leaseholder, Janice Weiss, in May 2020”. The bundle contains an email from the first Respondent to the Applicant’s property manager dated 26 May 2020 which forwards a communication from a company specialising in applying for HMO licences, suggesting a licence is necessary and offering to procure one. In any event, HMO licences have been granted in respect of the flats leased by all three of the Respondents, on the same date as that in respect of the common parts.
12. The Applicant has let two contracts. One, for the main works, was with Lone Star Facilities for 21,000. Two other quotations were received from other contractors, both for higher sums. The other contract is for the installation of an alarm system by UAS UK Ltd, for £5,689. It had not proved possible to secure alternative quotations in respect of this element. Both quotations are exclusive of VAT.
13. Final invoices have been provided, which add £120 (excluding VAT) for three carbon monoxide detectors, which I assume were added to the requirements during the process of the works. Otherwise, the invoices charge the same sums as the quotations.

14. The Applicant will make a contribution (which it describes as “ex gratia”) of £5,000 towards the costs of the work in order to mitigate any prejudice caused, if the Tribunal grants the current application.
15. The initial deadline for completing the works as a condition of the grant of the HMO licence was April 2022. The Applicant relates that it was able to secure an extension until July, but there was nonetheless insufficient time to undertake a full consultation exercise.
16. The application had notified the leaseholders of the need for works in October 2021. In May 2022, its solicitors wrote to the leaseholders a letter which states that it is a notice of intended works under section 20 and the Services Charges (Consultation Requirements)(England) Regulations 2003, but goes on to indicate that, given “the nature and urgency” of the work, the Applicant would be making this application.

### **Determination**

17. 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.
18. The Applicant pleads urgency in support of the application. It is accepted that a properly conducted section 20 consultation process can take some months. But the Applicant was aware of the full list of conditions of the licence in October 2021, and there had been some communication with the leaseholders at that time. However, it was not until May 2022 that the hybrid letter stating it was a notice of intended works, but also communicating the intention to seek a dispensation, was sent to the leaseholders. Had the Applicant acted with dispatch after the granting of the licence in October 2021, it is likely it could have completed a consultation process by July 2022. It is true that this includes the three month extension that was secured from Camden. However, there was no reason why an extension could not have been sought shortly after the grant of the licence. If an extension had been declined at that time, a reasonable case for urgency might be made out. But that is not what happened.
19. However, no responses have been received from any of the leaseholders claiming to have suffered prejudice as a result of the consultation requirements not having been satisfied. Further, the Applicant has offered a significant contribution to mitigate any prejudice that might be caused by dispensation. In such circumstances, the Tribunal must, quite apart from any question of urgency, allow the application: *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854.

20. I accordingly grant a retrospective dispensation from the consultation requirements in respect of the works identified. In the circumstances, it is appropriate to secure the offer made by the Applicant to contribute £5000 to the costs of the works by making that contribution a condition of dispensation.
  
21. 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:** 6 September 2022

## **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.