



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

Case Reference : **LON/00AW/LDC/2021/0255**

HMCTS code : **V:Paper**

Property : **1-7, 2 Southwell Gardens, London,
SW7 4SB**

Applicant : **2 Southwell Gardens Management
Ltd.**

Representative : **In Person**

Respondents : **The Leaseholders of 2 Southwell
Gardens, London SW7 4SB**

Representative : **In Person**

Type of Application : **For dispensation from the
consultation requirements under
section 20ZA Landlord & Tenant
Act 1985**

Tribunal Member : **Tribunal Judge
Mr R Waterhouse BSc (Hons) LL.M
Property Law MA FRICS**

Date of Decision : **18th January 2022**

DECISION

This has been a remote paper hearing, which has been consented to by the parties. A face-to-face hearing was not held because it was not practicable and no one requested same.

The documents the Tribunal were referred to were; the application form, a lease of the lower ground floor rear flat (2) , and a bundle of some 68 pages.

Decision

- (1) The tribunal determines that dispensation should be granted from the consultation requirements under s20 of the Landlord and Tenant Act 1985 (the Act) and the Service Charges (Consultation Requirements)(England) Regulations 2003 in respect of the property 1-7, 2 Southwell Gardens London, SW7 4SB (the property) for the reasons we have stated below.**
- (2) We make no determination as to the reasonableness of the costs of same, these being matters which can be considered, if necessary, under the provisions of s27A and s19 of the Act.**

The application

1. The applicant landlord sought dispensation from the consultation provisions in respect of repair to a leaking balcony. The Property is a house converted into seven flats.
2. The application was received 7th October 2021 and indicated an urgency. The reasons stated in the application are as follows. “Due to water ingress and there being no guaranteed temporary repair available, the Director of 2 Southwell Gardens Management Ltd has instructed work to proceed, which are to be completed on Thursday 7th October 2021.”
3. The Directions provided for the tenants and sub lessees to be informed of the application and to be provided with copies and the tribunal was informed are told by the managing agent by email dated 15th November 2021 that this was done on 10th November 2021.
4. The tribunal did not consider that an inspection of the Building was necessary, nor would it have been proportionate to the issues in dispute.
5. The only issue for the tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements of section 20 of the 1985 Act. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

Hearing

6. The matter came before the tribunal for hearing on 18th January 2022. The application under Grounds for Seeking Dispensation stated the nature of the works were;

“Provide protective floor covering to oak floors throughout. Access rear terraces and remove sections of timber decking and the supporting timbers below the decking to expose the asphalt balcony surface below. Thoroughly clean and prepare the balcony surface, apply Hydroseal liquid rubber water proofing system to approximately half of the balcony, once dry relay half of the existing timber decking back into position to allow the garden furniture to be reloaded. Clean and prepare the second half of the balcony and apply Hydroseal liquid rubber roofing system to the remaining area of the balcony. Once dry, relay second half of existing decking. Remove all debris from site, leaving area clean and tidy,”

7. The application further noted;

“Due to water ingress and there being no guaranteed temporary repair available, the Director of 2 Southwell Gardens Management Ltd has instructed work to proceed, which are to be completed on Thursday 7th October 2021.”

8. The Directions dated 27th October 2021 provided for the leaseholders to submit any objections to the tribunal by 24th November 2021. No objections had been received.

Findings

9. The tribunal in making its decision has noted that the applicant states in their evidence that no temporary repair was possible and that ongoing leaks were causing distress and damage to the impacted leaseholder and flat.
10. The Law applicable to this application is to be found at s20ZA of the Act. The decision of the Supreme Court in Daejan Investments Limited and Benson and others [2013] UKSC 14 has been taken into account by us in reaching our decision. There has not been any allegation of prejudice to the leaseholders as set out in the Daejan case. We therefore find that it is reasonable to grant dispensation from the consultation requirements required under s20 of the Act.
11. Our decision is in respect of the dispensation from the provisions of s20 of the Act only. Any concern that a Respondent has as to the standard of works, the need for them and costs will need to be considered separately.

Name: Tribunal Judge
Waterhouse

18th

January 2022

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 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 to 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 (ie 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