



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

Case reference : **LON/00AY/LDC/2022/0047**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **122 ChristChurch Road, London, SW2
3DF**

Applicant : **Penhurst Properties Ltd**

Representative : **Ricardo Trombetta, Chief Operating
Officer**

Respondents : **The leaseholders of 6 flats at 122
ChristChurch Road (as set out in a list
attached to the application)**

**Type of
Application** : **Dispensation with statutory
consultation requirements under
s.20ZA Landlord & Tenant Act 1985**

**Tribunal
member(s)** : **Judge N Rushton QC**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **19 May 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to or 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, no-one requested the same and all issues could be determined on paper. The documents to which the tribunal were referred were contained in the application, the sample lease and correspondence with the tribunal (no separate bundle having been provided), the contents of which have been considered by the tribunal.

Decision of the tribunal

- (1) Dispensation is granted pursuant to section 20ZA of the Landlord & Tenant Act 1985.

The application

1. The Applicant, Penhurst Properties Ltd, is the freeholder and landlord in respect of the 6 flats at 122 ChristChurch Road, London, SW2 3DF (“**the Property**”), which is a traditional brick building converted into flats. The Applicant acts through the Chief Operating Officer of Penhurst Group (which includes the Applicant), Ricardo Trombetta.
2. The Respondents are the leaseholders of the 6 flats, who were identified in a list submitted to the tribunal by the Applicant with the application and a copy of the lease, which the tribunal has seen.
3. The tribunal understands that all the flats are held under long leases in essentially identical terms, although it has not seen specific confirmation of this. A sample lease for Flat B has been provided by Mr Trombetta and it includes provision at clause 2(3) and Schedule 4 for the payment by the leaseholder of service charges for among other things repair and maintenance works carried out by the landlord.
4. The Applicant seeks dispensation pursuant to Section 20ZA of the Landlord & Tenant Act 1985 (“**the Act**”) in respect of consultation requirements in relation to certain “**Qualifying Works**” (within the meaning of the Act). The application is dated 2 March 2022.
5. The Qualifying Works comprised installation of a roof covering, the existing roof covering having blown off in recent heavy storms. The works were said to be urgent because the building was liable to suffer severe water ingress and extensive further damage if a roof covering was not fitted immediately. It is unclear whether the previous roof covering or the new covering were temporary or permanent. It appears the works were carried out at about the time the application was issued.
6. The only issue is whether it is reasonable to dispense with the statutory consultation requirements.

Paper determination

7. Directions were issued by Legal Officer Emmanuel Okolo on 29 March 2020.
8. Those directions among other things provided that the tribunal would serve each of the leaseholders with a copy of the application and a copy

of the directions. Correspondence on the tribunal's file shows that a copy of the application was sent to each leaseholder after it was received, on 10 March 2022, and a copy of the directions was sent to each leaseholder on 29 March 2022.

9. The directions provided that any leaseholder who opposed the application should by 25 April 2022 complete and return the reply form attached to the directions and send a statement in response to the Applicant.
10. No responses and no objections have been submitted by the Respondents, who have taken no part in this application.
11. The directions provided that the tribunal would determine the application on the basis of written representations unless any request for an oral hearing was received by 9 May 2022. No such request has been received. This application has therefore been determined by the tribunal on the papers supplied by the Applicant.
12. The directions state expressly that the Application only concerns whether it is reasonable to dispense with the statutory consultation requirements and does not concern the issue of whether any service charge costs resulting from the works are reasonable or payable.

The law

13. Section 20ZA of the Act, subsection (1) provides as follows:

'Where an application is made to a 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.'

14. The Supreme Court in the case of *Daejan Investments v Benson and others* [2013] UKSC 14 set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of sections 19 to 20ZA of the Act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate, went on to state:

'it seems to me that the issue on which the [tribunal] should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements'.

Findings of fact

15. The Application gives the following reasons for seeking dispensation: the works were very urgent as the roof had blown off leaving the upper flats exposed to the elements. Water damage had already occurred and was liable to continue. There was therefore a risk of damage to all of the Property, but especially the top flats. There was therefore an urgent need for the works.
16. No details have been supplied by the Applicant of the works actually carried out or their cost, although it is implicit in the Application that they have already been done. In the absence of any other information, the tribunal finds that it is more likely than not that the works to instal a new roof covering have already been carried out.
17. The tribunal's letters to the leaseholders of 29 March 2022 included a copy of the directions, which attached a form for filing any objections. There is no evidence that any objections or observations were received from any of the leaseholders.
18. The tribunal is satisfied on the basis of the Application and other documents, and in the absence of any other representations from the leaseholders, that the Qualifying Works were necessary and urgent in nature, having regard to the risks to the Property if they were not urgently carried out.
19. In the absence of any submission from any Respondent objecting to the works, the tribunal found no evidence that the Respondents would suffer prejudice if dispensation were to be granted.

Determination

20. In the circumstances set out above, the tribunal considers it reasonable to dispense with consultation requirements. Dispensation is granted pursuant to section 20ZA of the Landlord & Tenant Act 1985.
21. This decision does not affect the tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act as to the reasonableness and standard of the work and/or whether any service charge costs are reasonable and payable.

Name: Judge N Rushton QC

Date: 19 May 2022

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.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).