

10458



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

Case reference : LON/00AX/LDC/2014/0141

Property : 17 Claremont Gardens, London,
KT6 4TL

Applicant : Southern Land Securities Ltd

Representative : Hamilton King Management Ltd

Respondent : Various Leaseholders

Representative : In person

Type of application : For dispensation under section
20ZA of the Landlord & Tenant Act
1985

Tribunal members : (1) Judge I Mohabir
(2) Mrs A Flynn MA MRICS
(3) Mr Miller BSc

Date and venue of hearing : 10 December 2014
10 Alfred Place, London WC1E 7LR

Date of decision : 10 December 2014

DECISION

Introduction

1. The Applicant makes an application in this matter under section 20Za of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for retrospective dispensation from the consultation requirements imposed by section 20 of the Act.
2. This application relates to the removal and replacement to the parapet wall, which it said to have resulted in damp penetration to Flat 2, the ground floor flat, in the building thereby requiring the works to be carried out on an urgent basis.
3. On 10 October 2014, the Applicant’s managing agent, Hamilton King Management Ltd (“Hamilton King”), received a complaint from Mr Gibbs, the leaseholder of Flat 2, that his flat was suffering from damp and this was affecting his health and causing other major concerns.
4. Timkon Services Ltd, who are contractors instructed by the managing agent, attended the property and prepared a report dated 29 October 2014, which identified the cause of the damp penetration as being the defective render on the parapet wall. The report also set out a specification for the proposed repairs.
5. By a letter dated 13 October 2014, Hamilton King served on the leaseholders a Notice of Intention pursuant to section 20 of the Act in relation to the proposed repairs.
6. Hamilton King then made this application seeking dispensation from the requirement to carry out statutory consultation in relation to the following proposed works:
 - (a) to hack off/damp proof re-plastering.
 - (b) to renew plasterboard ceiling by reference to a sketch plan.
 - (c) to re-fit coping stones to the rear parapet wall.
7. On 31 October 2013, the Tribunal issued Directions, which included that a copy of the directions be provided by the Applicant to each of the leaseholders. No objection to the application has been received from any of them.

Relevant Law

8. This is set out in the Appendix annexed hereto.

Decision

9. The determination of the application took place on 10 December 2014 without an oral hearing. It was based solely on the statement of case and other documentary evidence filed by the Applicant.

10. The relevant test to be applied in application such as this has been set out in the Supreme Court decision in *Daejan Investments Ltd v Benson & Ors* [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.
11. The Tribunal granted the application for the following reasons:
- (a) the urgency of the repairs.
 - (b) the fact that the proposed works had been requested by the leaseholder of Flat 2 to be carried out on an urgent basis for the reasons given.
 - (c) the requirement in clause 5(5)(a)(i) of the residential leases requiring the landlord to carry out repairs when required to do so.
12. The Tribunal, therefore, concluded that the Respondents had not been prejudiced by the failure to consult by the Applicant and the application was granted as sought.
13. It should be noted that in granting this application, the Tribunal does not also find that the scope and estimated or actual cost of the repairs are reasonable. It is open to any of the Respondents to later challenge those matters by making an application under section 27A of the Act should they wish to do so.

Name: Judge I Mohabir **Date:** 10 December 2014

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.