



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

Case reference : LON/00AY/LDC/2015/0150

Property : 14 Elmcourt Road, London, SE27
9BZ

Applicant : Southern Land Securities Ltd

Representative : Hamilton King Management Ltd,
Managing Agent

Respondents : The Lessees

Representative : In person

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

Tribunal members : Judge I Mohabir
Mr L Jarero BSc FRICS

**Date and venue of
determination** : 17 February 2016
10 Alfred Place, London WC1E 7LR

Date of decision : 17 February 2016

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 additional works discovered when the Applicant commenced external repairs and redecorations to the building in April 2015. The Applicant had carried out statutory consultation under section of the Act in relation to the original works. Although some of the additional work formed part of the original specification, the extension in the scope of those works has resulted in higher costs than was originally allowed.
3. The additional works identified are set out in specification annexed hereto that was prepared by the surveyors, Langley Byers Bennett, who also prepared the specification for the original works.
4. Apparently, as the scaffolding was already in situ, a decision was made to carry out the additional works to save the leaseholders money, especially in relation to the flat roof works as water ingress had been reported by the affected leaseholder.
5. By an application dated 10 December 2015, the Applicant made this application seeking retrospective dispensation from the requirement to carry out statutory consultation for the additional works.
6. On 23 December 2015, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. The Tribunal also directed that this application be determined on the basis of written representations only.
7. No objection to the application has been received from any of the Respondents.

Relevant Law

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

Decision

9. The determination of the application took place on 17 February 2016 without an oral hearing. It was based solely on the statement of case and other documentary evidence filed by the Applicant. No evidence was filed by any of the Respondents nor have they participated in these proceedings in any way.
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.

13. The Tribunal granted the application the following reasons:
 - (a) the fact that each of the leaseholders had been informed of the need to carry out the proposed remedial works and the reasons why at the relevant time.
 - (b) the fact that no leaseholder has objected to the proposed works.
 - (c) that carrying out the additional works at the same time provided a cost saving to the leaseholders. For example, if the scaffolding had to be removed and re-erected or left in place whilst the Applicant carried out further consultation, this would have undoubtedly incurred further costs.
 - (d) importantly, any prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the estimated or actual costs involved.
14. The Tribunal, therefore, concluded that the Respondents would not be prejudiced by the failure to consult by the Applicant and the application was granted as sought.
15. It should be noted that in granting this part of the 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: 17 February 2016

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.

In accordance with Repair Care System's technical literature carry out the following preparatory work.

5.3 P2. Sealing of Sound and Open Joints. All conservation joints to each window casement. 50mm Item £ 390.00 £ 390.00 £ 390.00

5.3 P4 Repairing splits/cracks in timber. Cracks to be routed 10mm deep and 10mm wide. Item £ 50.00 See additions See additions

6 Decorations

6.1 Thoroughly prepare, prime and decorate all new and previously decorated softwood/hardwood including windows, window frames, gable boards and brackets, fascia boards etc. Remove any small sections of wet rot and prepare using Repair Care system. Prime any new and bare timber and apply 2 no. basecoats and 1 no top coat Dulux Weathershield Exterior Gloss. Colours to match existing. Item £ 2,616.00 £ 2,616.00 £ 2,616.00

6.2 Thoroughly prepare, seal and decorate all new and previously varnished hardwood including door thresholds. Seal any new and bare timber with 2 no. Dulux trade Aquatech preservative basecoats and apply 2 no. coats Dulux Weathershield Exterior Varnish. Item inc inc inc

6.3 Thoroughly prepare, prime and decorate all new and previously decorated metalwork including security grilles, rain water pipes, soil and vent pipes etc. Prime any bare metalwork with 1 no. coat Metalshield primer and apply 2 no. Dulux Metalshield gloss finish coats. Colour to match existing. Item £ 618.00 £ 618.00 £ 618.00

6.4 Thoroughly prepare, prime and decorate all new and previously decorated render to walls, mouldings, previously decorated sub cills, render 'plinth' detail etc. Include sealing / filling all cracks. Make good isolated damage / screw holes from redundant fixings. New or sound bare surfaces to be sealed with a thinned coat (1:5 water to paint) Dulux Weathershield smooth masonry paint. Any surfaces that remain powdery or friable after thorough preparation to be sealed with Dulux Weathershield Stabilising Primer. Decorate all with 2 no. finish coats of Dulux Weathershield smooth masonry paint. Colour to match existing. Item £ 1,731.00 £ 1,731.00 £ 1,731.00

6.5 Thoroughly clean all existing glazing, plastic, metal and other polished surfaces upon completion of works to include rainwater goods etc. Item £ 75.00 £ 75.00 £ 75.00

7 Common Grounds

Drains

7.1 Allow to carry out CCTV survey of all below ground drainage and provide report to CA. Item £ 1,000.00 Omit Omit

7.2 Further to a report of Issues with the drains a provisional sum of £2,000.00 is to be set aside to undertake necessary repairs, as directed by the CA upon necessary investigative works Provisional Sum for repairs as instructed PS £2000 £ 2,000.00 Omit Omit

Front Elevation Path

7.3 Carefully hack up the defective concrete path and cart away. Shutter along the same lines either side of where the existing path is (to match the same layout) and pour concrete at a 1:2:3 mix (DPC/Sand/Aggregate) the within the shuttering to a depth of no less 150 mm. Finish level and true. Item £ 1,908.00 £ 1,908.00 £ 1,908.00 Works not to be omitted due to health and safety issue

8 Contingency Sum

8.1 Allow the contingency sum to be expended only upon the written instruction of the CA to allow for any further repairs that may become apparent during the course of the works that are considered to be reasonably necessary. £2,500 £ 2,500.00 See additions See additions

Total Exc VAT (without additions)		£	28,167.00	£	15,712.00	£	15,712.00
Additional works							
Scaffold to LH flank elevation	item	£	1,400.00	£	900.00	Scaffold erected to high level only	
Supply and install helibars	30No	£	2,250.00	£	1,050.00	14no. Helibars to be installed following survey	
Strip and re-cover flat roof to RH elevation where leaking into flat.	3no	£	1,270.00	£	1,270.00		
Supply and install all associated lead flashing		£	545.00	£	545.00		
Re-dress and point all loose lead and zinc flashings to RH elevation		£	375.00	£	375.00		
Replace front guttering and introduce a new down pipe and soak away		£	607.00	£	607.00		
Supply and install missing gutter brackets and repair existing cast fixings		£	160.00	£	160.00		
Undertake repairs to concrete cills and insert bars as necessary	No	£	200.00	£	200.00		
Undertake brick repairs and pointing to LH elevation chimney		£	840.00	£	840.00		
Rake out and undertake re-pointing	90m2	£	4,050.00	£	4,050.00		
Chop off and re-render to RH elevation chimney breast inc angle beads etc	10m2	£	750.00	£	750.00		
Undertake render repairs to plinth and isolated areas			TBC		TBC	Costs to be provided from Diamond	
Re-launch valleys	28lnr	£	700.00	£	700.00		
Supply + fit 3no ridge tiles		£	180.00	£	180.00		

Supply and fit 3no hip tiles		£	135.00	£	135.00
Remove moss to roof and jet wash		£	175.00	£	175.00
Paint rear flat roof with 2no coats solar relective paint		£	350.00	£	350.00
Repairs to PVCu soffits and fascias			TBC		TBC Costs to be provided from Diamond
Piece in fascia board to top RH elevation and rear conservatory			TBC		TBC Costs to be provided from Diamond
Remove old pipes and bricks to all elevations and make good			TBC		TBC Costs to be provided from Diamond
Rake out / undertake resin repairs to cracked render and point in sand & cement	Lnr mtrs		TBC		TBC Costs to be provided from Diamond
Repairing splits/cracks in timber. Cracks to be routed 10mm deep and 10mm wide.	5no	£	250.00	£	250.00
Various Repairs to front garden wall			Omit		Omit Omitted: repairs to be carried out at a future date
Total Exc VAT (including additions)		£	28,167.00	£	29,949.00
				£	28,249.00