



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

Case Reference : **LON/00BK/LDC/2022/0235**

Property : **66 Ashmore Road London W9
3DG**

Applicant : **Ms C A Alphonse**

Representative : **Sonia Edmunds**

Respondents : **All leaseholders of the three flats at
the property listed in Application**

Representative : **In person**

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

Tribunal : **Mr R Waterhouse BSc (Hons) LLM
Property Law MA FRICS**

Date of Decision : **23rd January 2023**

DECISION

This has been a remote paper determination, 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 in a bundle of some 120 pages.

Decision

- (1) The tribunal determines that unconditional dispensation should be granted from the consultation requirements from section 20ZA of the Landlord and Tenant Act 1985 (the Act) in respect of the property 66 Ashmore London W9 3DG**
- (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. This application was made on the 27th November 2022 by Sonia Edmunds on behalf of the Freeholder Catherina Laretta Alphonse.
2. The application seeks dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985.
3. The application is concerned solely with the question of what consultation if any should be given of the consultation requirements of section 20 of the 1985 for works costing in excess of £250 per flat. It is not concerned with the reasonableness or payability of any service charges which may arise.

The hearing

4. A written application was made by Sonia Edmunds, who have been appointed by the freeholder, to make this application. The case was decided on paper and no appearances were made. The tribunal considered the written bundle of 120 pages, in support of the application.

Background

5. The property which is the subject of this application is a Victorian terrace comprising three floors with separate self-contained flats Flat A, B and C. Each flat is owned by separate leaseholders.
6. The applicant in this case is the freeholder.
7. This application has been issued because, quoting the application form.... “there is external leaking into Flat C which is further impacting Flat B and Flat A. “Emergency repairs have been conducted to the roof on three separate occasions to make the roof safe to enable us to abide by Section 20 however these have not been successful. The only way to prevent any further damage to the property is by replacing the roof. As there was a large amount of forecasted rain at the time, we had to proceed with the works to keep property and tenants safe. “
8. The application notes; “No consultation has been carried out however the Applicant have been liaising closely with the leaseholders and kept them informed. The Applicant wrote to the leaseholders to advise them of the Section 20 Notice and the steps that need to be taken. The Applicant provided the leaseholders with two quotes for the roof replacement, to which they agreed in writing to proceed with KFM Building Solutions.”
9. The Application is accompanied by a separate document titled “Grounds for Seeking Dispensation”. The document gives a detailed note of the chronology of the background leading to the application. Its contents have been carefully noted. There is included in the evidence an extensive “Whatsapp” chain of dialogue that shows the extent of the leak and the impact on the occupiers.
10. Directions were issued by Judge Pittaway on 5th December 2022.
11. The Directions directed that by 12th December 2022 the freeholder Ms Alphonse should provide the tribunal with written authority for her daughter Sonia Edmunds to act on her behalf. Evidence dated 7th December 2022 has been provided to the tribunal which confirms this.
12. The directions also require by 12th December 2022 that the freeholder should provide for the tenants to be given copies of the application form, a brief statement to explain the reasons for the application and display a copy of the directions in a prominent place in the common parts of the property. Confirming to the tribunal this has been done by 15th December

2022. Evidence has been submitted to the Tribunal noting that each leaseholder was sent the material by hand on the 8th December 2022.

11. The Directions also note that any leaseholder who opposes the application should by the 3rd January 2023 complete the reply form and return it to the tribunal.
12. 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.**

Documents

13. It is appropriate to record that the tribunal has not received any Reply forms completed by the Respondents, and so there are no objections to the application before us, or representations objecting.

The tribunal's decision

14. There is no evidence that the Direction requirement to display the Application within the common parts has been met. However, given the evidence of providing each leaseholder with a copy, the tribunal decides that this omission is not fatal to the application. The tribunal grants dispensation under section 20 ZA of the Landlord and Tenant Act 1985 and the Service Charges (Consultation) (England) 2003 for the works set out in the application.
15. We are, aware of the judgment in *Daejan Investments Limited v Benson and others* [2013] UKSC 14. The application for dispensation is not challenged.
16. The Supreme Court (Lord Neuberger at para 50) accepted that there must be real prejudice to the tenants. Indeed, the Respondents do not oppose the application. It is accepted that we have the power to grant dispensation on such terms as we think fit. However, the Landlord is entitled to decide the identity of the contractors who carry out the work, when they are done, by whom and the amount. The safety net for the Respondents is to be found in sections 19 and 27A of the Landlord and Tenant Act 1985.
17. Accordingly, we find that unconditional dispensation should be granted. In making our decision we have borne in mind the quotes which we were referred, which in our finding clearly indicate that works are required at the Property.

18. 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 and their position is not affected by our decision on this application.

Richard Waterhouse

Name:	Richard Waterhouse LLM FRICS	23rd January 2023
--------------	---	---

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**