



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

**Case Reference** : **CHI/00ML/LDC/2014/0003**

**Property** : **33 St George's Road, Kemp Town, Brighton BN2  
1ED**

**Applicant** : **33 St George's Road(Brighton) RTM Co  
Limited**

**Respondent** : **Mr D Bryant  
Ms M Buckley  
Ms D Nicoli**

**Type of Application** : **Section 20ZA Landlord & Tenant Act 1985  
To dispense with the requirements to consult  
lessees about major works.**

**Tribunal Members** : **Judge D. R. Whitney  
B. Simms FRICS**

**Date of hearing** : **28th March 2014**

**Date of Decision** : **4<sup>th</sup> April 2014**

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**DECISION**

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## INTRODUCTION

1. This is an application by the management company of 33 St George's Road, Kemp Town Brighton ("the Property") for dispensation from the requirement to consult over major works. The first floor flat has suffered a leak as a result of defective guttering in the roof and works have been undertaken to repair the same. Dispensation is sought for these works.
2. The building consists of three flats. Ms Buckley-Flyn of 33a and Ms Nicoli of the Ground Floor Flat have supported the application. No response has been received from Mr Bryant the owner of the first floor flat.

## THE LAW

3. The relevant law can be found in section 20ZA of the Landlord and Tenant Act 1985:

### 20ZA Consultation requirements: supplementary

(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, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### INSPECTION

4. The tribunal inspected the Property on the morning of the hearing accompanied by Ms Kruger of Deacon & Co the Applicants managing agents.
5. The building appears to be the end of a terrace of regency style villas although it is now linked to an adjacent property. It appears to have been converted at some point into three flats being a basement, ground floor and first floor flat. The Property has replacement casement windows (at least to the front elevation) and appeared to be in a poor state of repair and decoration. The tribunal were provided with a bundle of photographs which are appended to this decision.
6. the tribunal inspected the first floor flat and were shown a bedroom to the rear of the property overlooking a small courtyard. This bedroom had plainly visible two areas of damaged ceiling supposedly damaged by water ingress. The tribunal was also able to access the courtyard via the basement flat to look up. It was apparent that there was a central valley gutter which appeared to be above and close to where the ceiling was damaged. The tribunal was advised that this valley gutter and the parapet to the front elevation had been repaired.

#### DETERMINATION

7. The tribunal notes that the application is made by the RTM company managing the Property. The application is supported by two of the three leaseholders. No response has been received by the tribunal from the third leaseholder who is also the leaseholder of the flat affected by the damaged ceiling although the tribunal notes that this flat is sub-let.
8. The tribunal had before it a witness statement of Ms Kruger. This statement had two estimates attached to it and also a first stage consultation notice dated 28<sup>th</sup> January 2014.
9. The tribunal were informed at the inspection the works had been completed about 2 or 3 weeks prior to the inspection. Ms Kruger when asked at the inspection could not confirm that the two estimates being M. Barnett Roofing Services dated 20<sup>th</sup> January 2013 (sic) and M.R.G. Decorating & Property Maintenance Limited dated 03.02.14 had been sent to the Respondents.
10. The tribunal was satisfied following its inspection of the first floor flat that damage was being caused to the same and this may have got worse if no works had been completed. The tribunal has to rely upon the photos as evidence that work was undertaken as they could not access the roof to inspect.
11. The tribunal takes account of the fact that no objection has been received and that the two Respondent leaseholders not directly affected by the lease support the application. This being said the tribunal wishes to highlight that it sees no reason why the estimates could not have been sent to the Respondents when they were received for comment and informal consultation. Such must be best practice. Further given the Applicant plainly choose to proceed with the works without awaiting the determination it would have been useful if this had been made clear in the application.
12. The tribunal reminds the parties that in reaching its decision it makes no determination or finding as to whether the costs of the works are reasonable,

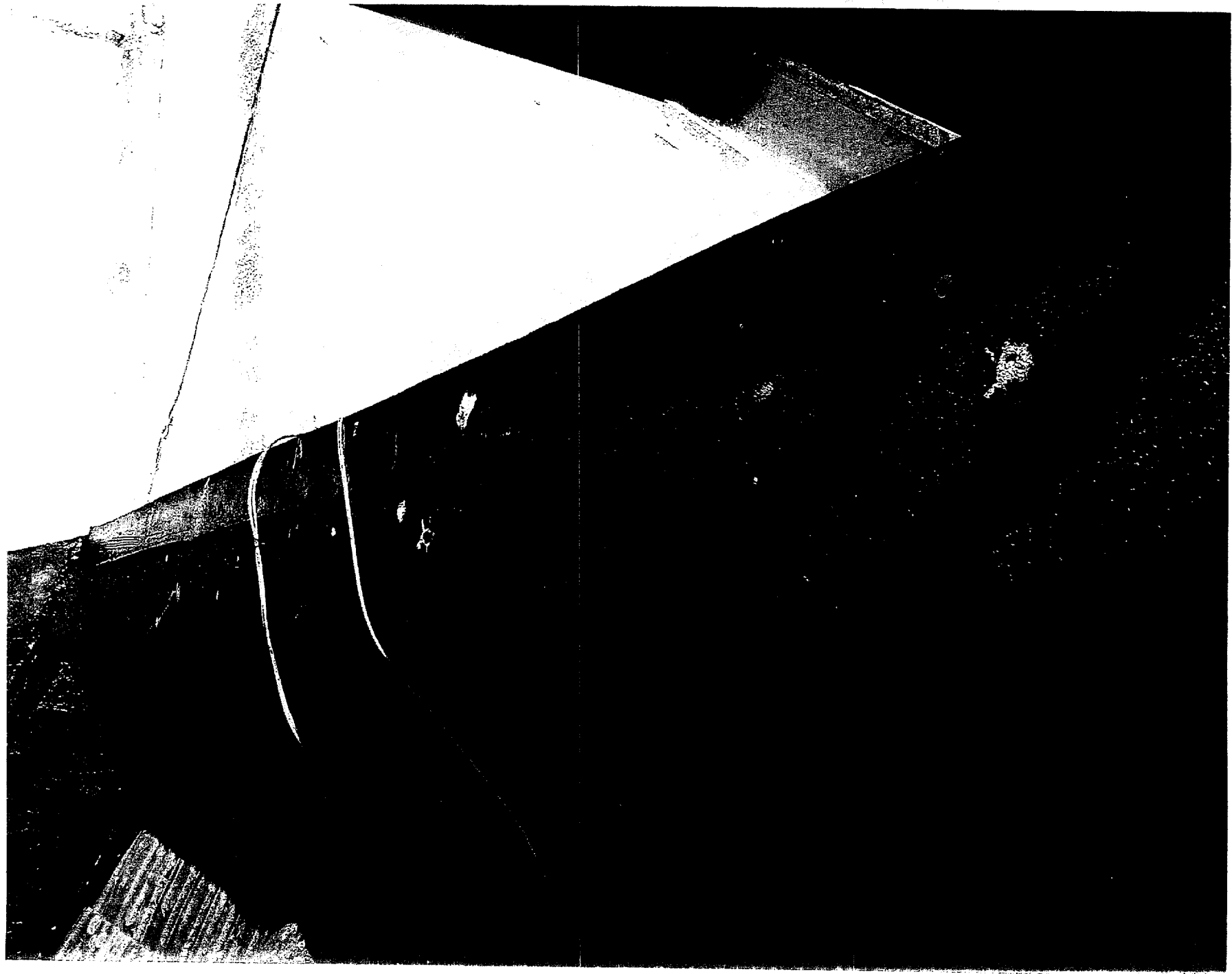
recoverable or whether they have been completed to a reasonable standard. These are separate matters which the parties may bring alternative future claims to the tribunal over.

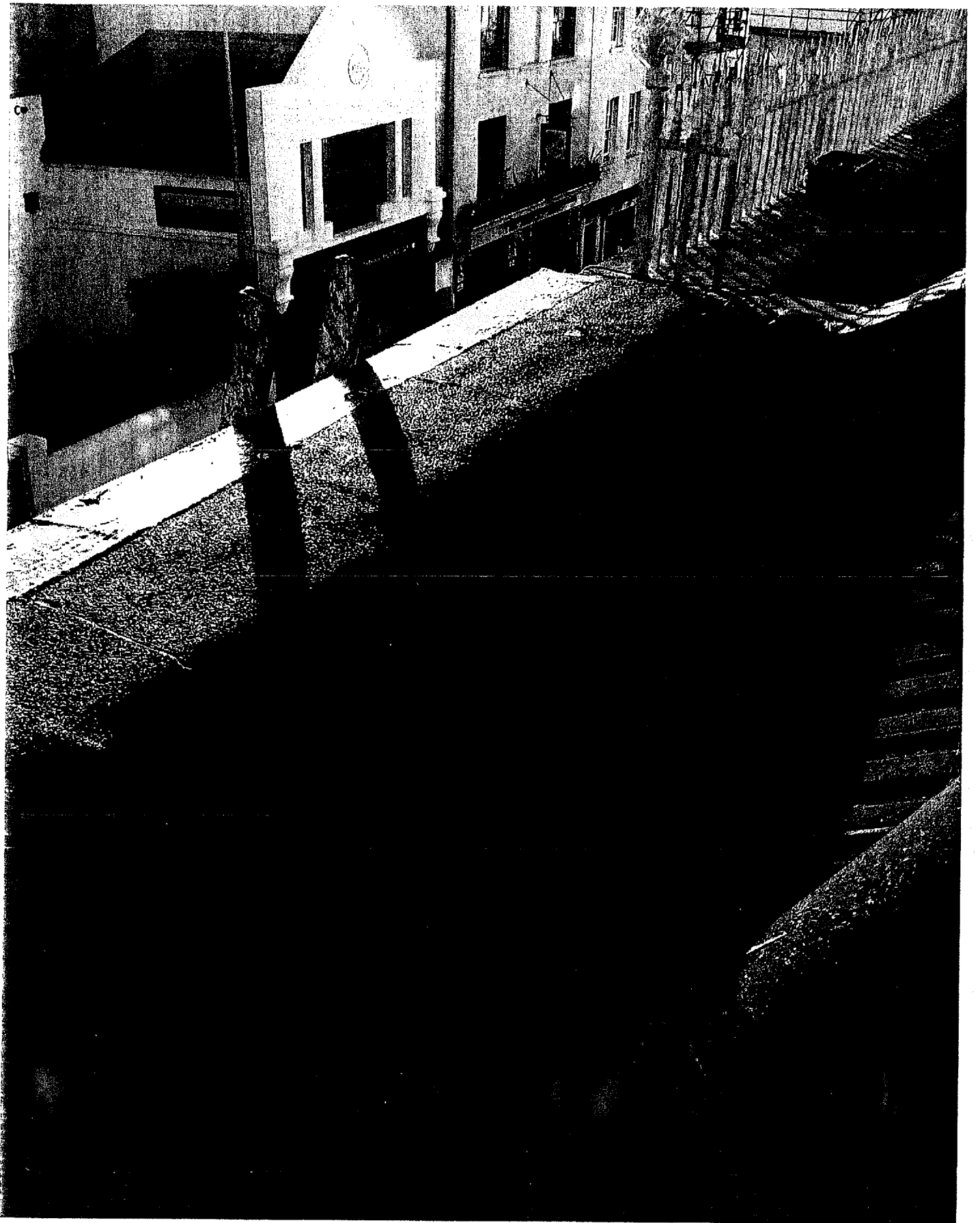
13. The tribunal determines that the requirements to consult in respect of the major works as set out in the witness statement of Cindy Kruger dated 13<sup>th</sup> February 2014 and the estimate of M. Barnett Roofing Services are dispensed with conditional upon the Applicant within 21 days of this decision serving upon all of the Leaseholders a copy of the Witness Statement and appendices of Cindy Kruger dated 13<sup>th</sup> February 2014 and this determination.

Judge D. R. Whitney

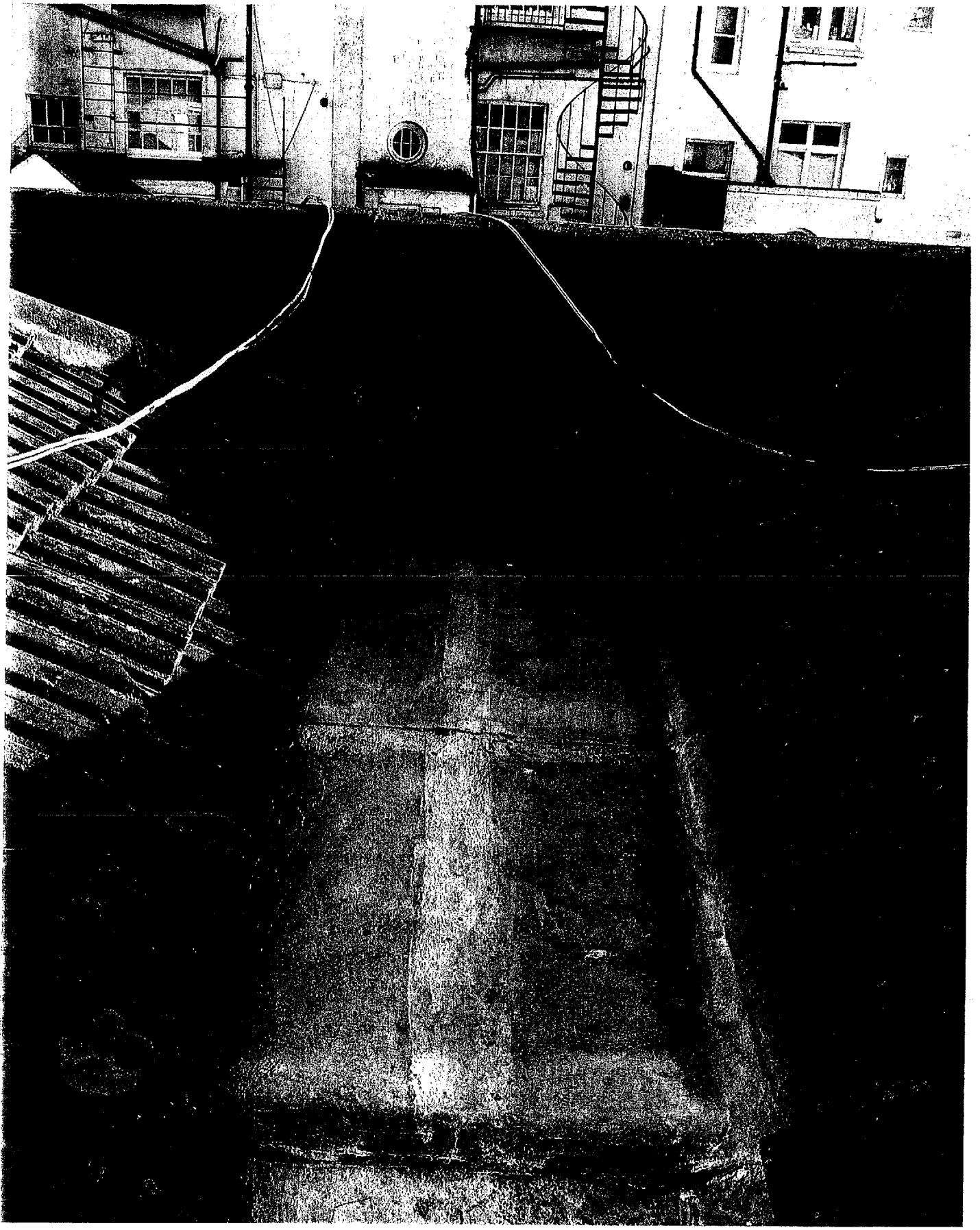
### Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

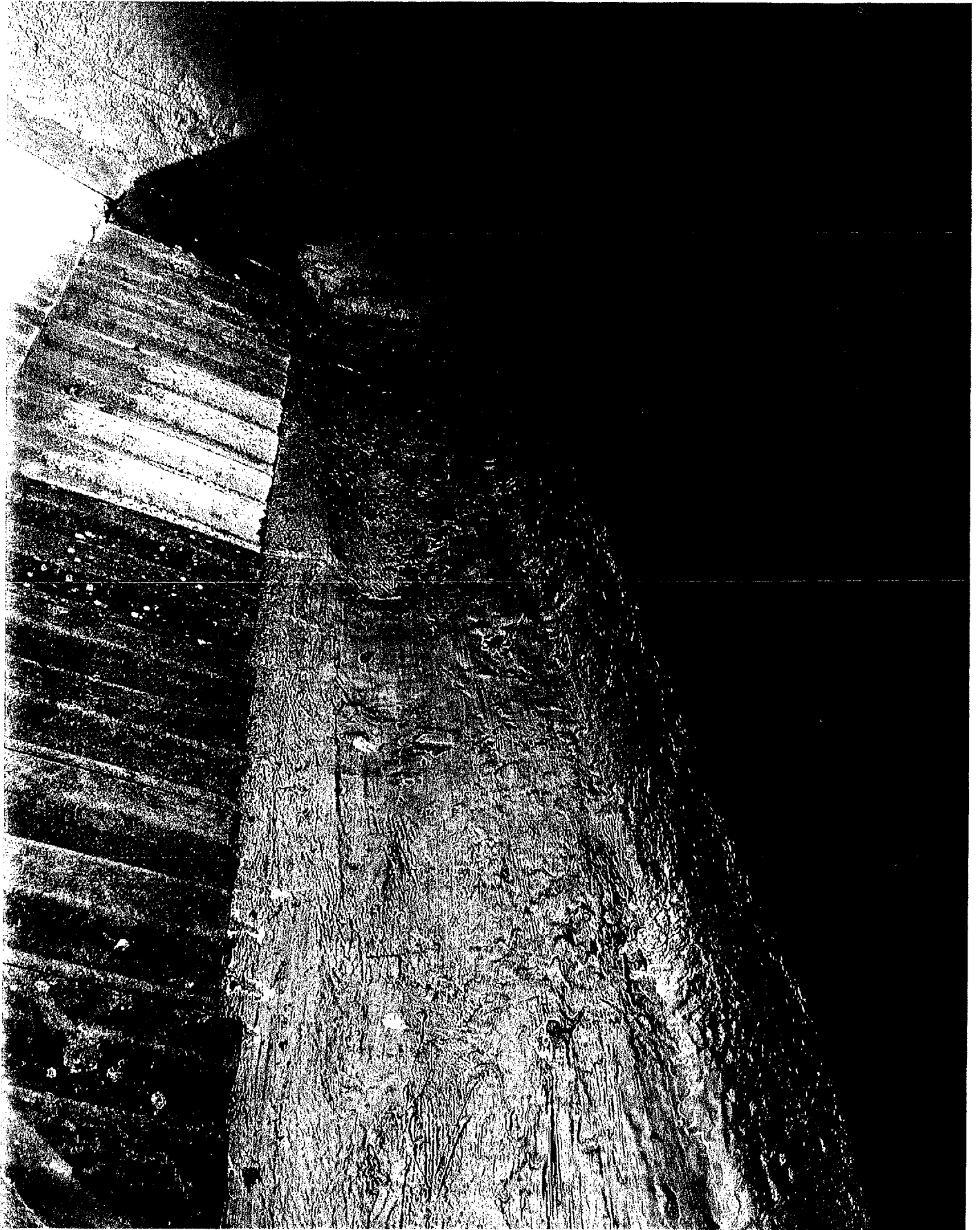












**33 St George's Road, Brighton**  
**Top Floor Flat [of 3]**

Scaffold Front Elevation re Box Gutter Repair

