

18076



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

**Case Reference** : **LON/00AG/LDC/2018/0166**

**Property** : **64 Fitzjohns Ave, London NW3 5LT**

**Applicant** : **Mr Martin Kingsley, court-appointed manager**

**Representative** : **In person**

**Respondents** : **Various as per the attached schedule**

**Representative** : **None**

**Type of Application** : **Dispensation from consultation requirements under section 20ZA Landlord and Tenant Act 1985 ("the Act")**

**Tribunal Member** : **Mr Charles Norman FRICS (Valuer Chairman)  
Mr Michael Taylor FRICS**

**Date of Decision** : **19 November 2018**

**Determination by Written Representations**

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**DECISION**

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## **Decision**

1. The application for dispensation is **GRANTED** unconditionally.

## **Reasons**

### **Background**

2. Application to the Tribunal was made on 25 September 2018 for a dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) (set out in the appendix). The application concerns costs for rebuilding a boundary wall.
3. Directions were issued on 5 October 2018 that the matter be dealt with by written representations unless any party made a request for an oral hearing, which none did. The directions required the applicant to inform the lessees of the application. In addition, the respondents were invited to respond to the application.
4. The Tribunal did not consider it necessary or proportionate to inspect the property

### **The Property**

5. The property is a Victorian building now converted into 5 flats.

### **The Respondents’ leases**

6. A sample lease was supplied but the tribunal makes no finding as to payability or reasonableness of the costs to be incurred in this application.

### **The Applicant’s Case and Nature of the Works**

7. The applicant’s case was that the rear boundary retaining wall was found to be seriously defective and at risk of collapse. Removal and reconstruction were considered urgent on health and safety grounds. The wall is only 6 feet from the rear of flat A’s patio. The retaining wall is approximately 2.5 m high and cars pass adjacent to it. The leaseholders were aware of the works undertaken by the contractors of flat A. In view of the urgency, the works were carried out by flat A the lessee of which was carrying out works to that flat at the time. The other leaseholders were made aware of the situation. The bundle included photographs showing the wall in severe disrepair.
8. A letter from Jampel Davison & Bell consulting engineers, dated 15 December 2015 was included in the bundle. This advised that wall replacement was required urgently.

9. The bundle included an estimate from Erdol Construction Limited for £10,440 inclusive of VAT, who carried out the work.

### **The Respondents' Case**

10. Professor Green and Mrs Green (Flat E) responded to the application but did not object to it. The remaining respondents did not respond to the application in the Tribunal.

### **The Law**

11. Section 20ZA is set out in the appendix to this decision. The Tribunal has discretion to grant dispensation when it considers it reasonable to do so. In addition, the Supreme Court Judgment in *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 empowers the Tribunal to grant dispensation on terms or subject to conditions.

### **Findings**

12. The Tribunal considers that the works were urgently required and that the applicant has acted reasonably in seeking the dispensation sought. The Tribunal does not consider that any respondent will be prejudiced by curtailment of the full consultation procedure. The Tribunal therefore grants dispensation in respect of the works and quotation from Erdol Construction Limited for £10,440 inclusive of VAT referred to above.
13. This application does not concern the issue of whether any service charge costs will be reasonable or payable. The residential leaseholders will continue to enjoy the protection of section 27A of the Act.

C Norman FRICS  
Valuer Chairman

19 November 2018

### **ANNEX - RIGHTS OF APPEAL**

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.

## Appendix

### Section 20ZA Landlord and Tenant Act 1985

(1) Where an application is made to [the appropriate 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.