FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AN/LDC/2019/0115**
Property	:	**Phoenix Lodge Mansions, Brook Green, London W6 7BG**
Applicant	:	**Phoenix Lodge Residents Limited**
Representative	:	**Alice Duggan at SP Property Group**
Respondents	:	**The lessees as listed on the application**
Representative	:	**N/A**
Type of Application	:	**For the dispensation from the requirements to consult lessees about major works – S20ZA Landlord and Tenant Act 1985**
Tribunal Members	:	**Patrick M J Casey MRICS**
Date and venue of Hearing	:	**Paper determination on 28 August 2019 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**2 September 2019**

DECISION

Decision of the tribunal

1. The tribunal grants the applicant dispensation from the statutory consultation requirements of S20 of the Landlord and Tenant Act 1985 ("the Act") in respect of works to be carried out to Phoenix Lodge Mansions, Brook Green, London W6 7BG ("the building") to eradicate dry rot in flat 1.

The background

2. The applicant freeholder a company owned by some if not all the lessees of the block, had in 2018 commenced a programme of major works to the block including reroofing and external repairs and redecorations. A full S20 consultation had been carried out in respect of these works and a contractor was duly appointed following consideration of the four tenders received with the cost of the works in the order of £ 1¼m plus VAT and professional fees. A surveyor was appointed as contract administrator. As these works were being undertaken dry rot was identified in Flat 1 on the ground floor that had spread through the floor and walls which save for floor boards and wall plaster are not demised with the flat but form part of the common parts. Investigations into the problem were undertaken to try to establish its extent, likely causes and remedial works necessary to eradicate the problem and ensure it did not return. A comprehensive report dated 1st March 2019 prepared by Hutton & Rostron Environmental Investigations Ltd is included in the hearing bundle.

3. The applicants decided that the necessary work to eradicate the identified dry rot should be carried out by the contractor on site by bringing the works within the scope of the existing JCT contract thus saving on further preliminaries and associated costs if another contractor were appointed. However further investigation as the fabric of the flat was opened up to do the works showed that the dry rot had spread significantly further than first thought. The floor slab in the kitchen has had to be removed along with kitchen fittings and the lessee has had to move to alternative accommodation. Whilst the scope of work required has increased the applicant felt it was not appropriate to pause the repairs and carry out a full consultation as this would increase disruption to the lessee and costs to the applicant in respect of further payments for alternative accommodation as well as giving time for the dry rot infestation to spread further. It is for these reasons that the application for dispensation has been made. The works have been commenced and are apparently still ongoing.

4. The application for dispensation from the consultation provisions of S20 of the Act was made on 15 July 2019 and Directions in respect of this application were made by the tribunal on 31 July 2019. These provided the leaseholders with an opportunity to agree or oppose the application by completing a form included in the directions to advise their support of or opposition to the application to the tribunal. The Directions required the applicant to send to each lessee a copy of the application and the Directions and also to display both documents in the common parts of the building. A statement certifying

that this had been done was sent to the tribunal by the applicants on 8 August 2019. None of the lessees at the block have completed and returned the form to the tribunal indicating opposition to the application.

5. The directions provided for the application to be determined on the papers directed to be submitted to the tribunal unless any of the parties requested an oral hearing; none did and the tribunal considered the application and the supporting documentation on 28 August 2019. No inspection of the property was thought necessary by the tribunal given the information in the hearing bundle and no party asked for one.

6. In the application form the property is described as a late Victorian Mansion block in gated grounds. The lease plan shows two separate blocks each containing flats on three floors with a total of 33 flats in all.

7. Details of the statutory provisions relevant to this application are set out in Appendix 2 to this decision.

The tribunal's decision

8. The leading authority in relation to s.20ZA dispensation requests is Daejan Investments Ltd v Benson [2013] 1 WLR 845 ("Benson") in which the Supreme Court set out guidance as to the approach to be taken by a tribunal when considering such applications. This was to focus on the extent, if any, to which the lessees were prejudiced in either paying for inappropriate works or paying more than would be appropriate, because of the failure of the landlord to comply with the consultation requirements. In his judgement, Lord Neuberger said as follows:

> 44. Given the purpose of the Requirements is to ensure that the tenants are protected from (1) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(i) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements.
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> 44. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the Requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be – ie as if the Requirements had been complied with.

9. None of the leaseholders is opposed to the application nor suggests that the works to be carried out are inappropriate or unnecessary. Nor is there any

evidence that the leaseholders will be asked to pay more than is appropriate for the cost of the works.

10. The factual burden of identifying some relevant prejudice is on the leaseholders. They need to show that they have been prejudiced by the failure of the landlord to comply with the statutory consultation procedure. If a credible case of prejudice is established, then the burden is on the landlord to rebut that case.

11. The tribunal is satisfied that no relevant prejudice has been identified. Whilst compliance with the consultation procedure would have enabled the leaseholders to suggest alternative contractors and make observations on quotes received, there is no evidence to suggest that failure to comply with the consultation requirements will lead to the applicant incurring costs in an unreasonable sum, or lead to works being carried out that fall below a reasonable standard. No alternative quotes have been provided that would support such a contention.

12. That these works are urgently required is clear as in the tribunal's experience dry rot if left untreated can spread through a building with alarming speed and cause widespread and significant damage. The remedial works required require extensive stripping out of the flat rendering it uninhabitable with increasing costs of alternative accommodation the longer it is so. There is nothing before the tribunal to suggest dispensation should not be granted and the tribunal is satisfied that it is reasonable to dispense with requirements of the Service Charge (Consultation Requirements)(England) Regulations 2003. Nothing in this decision to grant dispensation should be taken as limiting any leaseholder's rights to challenge a subsequent service charge demand on any grounds save as to compliance with the consultation requirements.

Name: P M J Casey **Date:** 2 September 2019

APPENDIX 1
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 Tribunal 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 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.

4. 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.