



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

Case reference : **LON/00AG/LDC/2021/0110**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **155 King Henrys Road, London NW3
3RD**

Applicant : **Ultratown Limited**

Representative : **Lauren Lacey of HML Managing Agents**

Respondents : **The leaseholders of 4 flats at 155 King
Henrys Road (as set out in a list
attached to the application)**

**Type of
Application** : **Dispensation with statutory
consultation requirements under
s.20ZA Landlord & Tenant Act 1985**

**Tribunal
member(s)** : **Judge N Rushton QC**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **2 August 2021**

Date of decision : **2 August 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to or not objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, no-one requested the same and all issues could be determined on paper. The documents to which the tribunal were referred were in a bundle of

58 pages, plus associated correspondence with the tribunal, the contents of which have been considered by the tribunal.

Decision of the tribunal

- (1) Dispensation is granted pursuant to section 20ZA of the Landlord & Tenant Act 1985.

The application

1. The Applicant, Ultratown Limited, is the freeholder and landlord in respect of the 4 flats at 155 King Henrys Road, London NW3 3RD (“**the Property**”), which is a traditional brick building dating from the 1880s which has been converted into 4 flats. The Applicant acts through its managing agent Lauren Lacey of HML, Prospect House, 2 Athenaeum Road, N20 9AE (“**HML**”).
2. The Respondents are the leaseholders of the 4 flats, who were identified in a list submitted to the tribunal by the Applicant with the application, which the tribunal has seen.
3. The tribunal understands that all the flats are held under long leases in essentially identical terms, although it has not seen specific confirmation of this. A sample lease for the Ground Floor flat was included in the bundle and it includes provision for the payment by the leaseholder of service charges for among other things repair and maintenance works carried out by the landlord.
4. The Applicant seeks dispensation pursuant to Section 20ZA of the Landlord & Tenant Act 1985 (“**the Act**”) in respect of consultation requirements in relation to certain “**Qualifying Works**” (within the meaning of the Act).
5. The Qualifying Works comprised erection of a temporary scaffolding tower to access guttering at the Property and unblocking of an outlet by the removal of accumulated debris, leaving the gutter free-flowing. The works were said to be urgent because the gutter was overflowing onto the flat roof of an adjacent property as well as onto the Property itself. The works were carried out on or shortly before 23 June 2021.
6. The only issue is whether it is reasonable to dispense with the statutory consultation requirements.

Paper determination

7. The Application is dated 19 April 2021. Directions were issued by Judge Hamilton-Farey on 4 June 2021.

8. Those directions among other things required the Applicant by 14 June 2021 to send each of the leaseholders (and any residential sublessees) by email, hand delivery or first class post: copies of the application form (excluding the list of respondents), the directions and a statement explaining the reasons for the application. The directions also required the Applicant to display a copy of the same documents in a prominent place in the common parts of the Property, and to confirm to the tribunal by 18 June 2021 that these steps had been taken.
9. By an email dated 8 June 2021 to the tribunal, Ms Lacey confirmed that all the leaseholders were issued with the required documents by an email on 8 June 2021. By a further email of 29 June 2021, Ms Lacey confirmed that a copy of the required documents was also displayed in the common parts on 9 June 2021.
10. The bundle includes a copy of the email of 8 June 2021 to the leaseholders, by which Ms Lacey explained the need for the works. Also included is an email from Ms Lacey to the freeholder's agent of 24 March 2021, explaining that there was a leak affecting the property and an adjoining property, and that two different contractors had advised that a scaffolding tower would be needed to access it and deal with the leak. Ms Lacey said she had obtained two quotes for the works, both of which were around £2,000, which was above the consultation limit. (This is £1,000 in total as there are 4 flats.)
11. The bundle also includes an email dated 17 May 2021 from one of the leaseholders, Ruth Hagan, to Ms Lacey, in which Ms Hagan asked for an update on the progress made in "*getting the leaking spouting cleared at our property please. The torrential rain we have had recently which is forecast to continue this week must be causing damage to the building. For those of us who live here we feel this is in need of urgent attention.*" Ms Lacey replied that she had submitted the application for dispensation, to which Ms Hagan responded by saying it should be impressed on the tribunal that this needed urgent attention.
12. Ms Lacey's email to the leaseholders of 8 June 2021 explained that following attendance by contractors, a scaffolding tower would be needed to gain access to the guttering, and that the cost of the tower alone would be above the s.20 consultation limit. She continued that due to the urgency of the repair, which might be causing damage to an adjoining property, the dispensation application had been made, and they had also instructed the scaffolding tower to be erected and repairs to be undertaken the following week, on the freeholder's instruction.
13. IDC Roofing and Leadwork Specialists ("**IDC**") were instructed by HML to carry out the works. On 23 June 2021 Billy Baxter of IDC emailed Ms Lacey to confirm that the work had been carried out, attaching photographs of the outlet as originally blocked with leaves, the cleared outlet, and the scaffolding tower.

14. The bundle includes the final invoice from IDC dated 3 July 2021, in respect of a “gutter clean” including provision of plant, for £1,675 plus VAT or a total of £2,010.
15. No responses and no objections have been submitted by the Respondents, who have taken no direct part in this application. As already noted, one of the Respondents, Ms Hagan, clearly supports the application and regarded the works as an emergency.
16. The directions provided that the Tribunal would determine the application on the basis of written representations unless any request for an oral hearing was received by 9 July 2021. No such request has been received. This application has therefore been determined by the Tribunal on the papers supplied by the Applicant.
17. The directions state expressly that the Application only concerns whether it is reasonable to dispense with the statutory consultation requirements and does not concern the issue of whether any service charge costs resulting from the works are reasonable or payable.

The law

18. Section 20ZA of the Act, subsection (1) provides as follows:

'Where an application is made to a 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.'

19. The Supreme Court in the case of *Daejan Investments v Benson and others* [2013] UKSC 14 set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of sections 19 to 20ZA of the Act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate, went on to state *'it seems to me that the issue on which the [tribunal] should focus when entertaining an application by a landlord under section 20ZA(1) 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'*.

Findings of fact

20. The Application gives the following reasons for seeking dispensation: the works were urgent as the guttering was leaking not only onto the Property but also onto an adjoining flat roof. There was therefore risk of damage to both properties. The urgent need for the works is supported by the emails from one of the Respondents, Ms Hagan.

21. The details of the works carried out and the costs as invoiced are set out above. The Tribunal finds that the works have been carried out, as described in the invoices and the email from the contractor of 23 June 2021, and as photographed, on or shortly before 23 June 2021.
22. The email of 8 June 2021 to the leaseholders invited any questions, and the directions attached included a form for filing any objections. There is no evidence that any observations were received from any of the leaseholders. As already noted, one of the leaseholders supported the need for the works to be carried out urgently.
23. The Tribunal is satisfied on the basis of the statements in the Application and the documents in the bundle, and in the absence of any other representations from the leaseholders, that the Qualifying Works were necessary and urgent in nature, having regard to the risk to the structural integrity of the Property and the adjacent property if they were not urgently carried out.
24. In the absence of any submission from any Respondent objecting to the works, the Tribunal found no evidence that the Respondents would suffer prejudice if dispensation were to be granted.

Determination

25. In the circumstances set out above, the Tribunal considers it reasonable to dispense with consultation requirements. Dispensation is granted pursuant to section 20ZA of the Landlord & Tenant Act 1985.
26. This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act as to the reasonableness and standard of the work and/or whether any service charge costs are reasonable and payable.

Name: Judge N Rushton QC

Date: 2 August 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).