



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

**Case reference** : **LON/00AJ/LDC/2020/0232**

**HMCTS Code** : **P: Paper remote**

**Applicant** : **Alexandria Road (West Ealing)  
Management Company Limited**

**Representative** : **Gem Estate Management Limited**

**Respondents** : **Multiple leaseholders as detailed in  
the application and attached  
address list**

**Property** : **1 – 83 Luminosity Court, 49  
Drayton Green Road, West Ealing  
W13 0NW**

**Type of application** : **For dispensation under section  
20ZA of the Landlord & Tenant Act  
1985**

**Tribunal member** : **Tribunal Judge I Mohabir**

**Date of determination** : **25 May 2021**

**Date of decision** : **25 May 2021**

---

**DECISION**

---

## **Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers, which has been consented to by the Applicant and not objected to by the Respondents. The form of remote hearing was P: PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and no one requested the same.

### ***Introduction***

1. The Applicant makes an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for dispensation from the consultation requirements imposed by section 20 of the Act.
2. 1-83 Luminosity Court, 49 Drayton Green Road, West Ealing W13 0NW (“the property”) is a two block building comprised of 83 purpose built flats of varying sizes with a communal reception area. The smaller block is comprised of 4 floors and the larger block 9 floors including an underground car park covering both blocks.
3. A survey report dated 13 August 2019 was prepared by B Richards Fire Protection Consultants Limited regarding the installed fire compartmentation seals at the property. The conclusions in the report were:

*“There are a number of issues noted with installed materials, the main ones being:  
It was noted that there are a large number of instances recorded where cables and pipework has been installed through fire compartment walls without the use of any fire seals.  
There have been two instances of partition walls that have been installed where header track has been omitted from the construction.  
There are numerous instances of incomplete or damaged partition walls in the riser cupboards.  
It has been noted that the ‘floating floor’ construction used in the communal areas, allows for a potential void under the threshold of fire doors in risers and corridor doors.”*
6. Subsequently, the Applicant made this application dated 24 November 2020 seeking dispensation from the requirement to carry statutory consultation in relation to the proposed remedial works.
7. The reason for seeking dispensation is that from the application it would seem that the original developer, Nicholas King Homes, is intending to return to the property to undertake these works, estimated at £250,000 but to only charge the applicant £23,3421.66 plus VAT. As a result, there will be no tendering and the applicant seeks dispensation from the consultation procedure in respect of the sum they are expected to pay. The works were intended to be completed by 31 March 2021.

The Tribunal was not told whether this has in fact occurred. Apparently, the leaseholders have been kept fully informed about this matter.

8. On 9 March 2021, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. The Tribunal also directed that this application be determined on the basis of written representations only.
9. None of the Respondents have objected to the application.

### ***Relevant Law***

10. This is set out in the Appendix annexed hereto.

### ***Decision***

11. The determination of the application took place on 25 May 2021 without an oral hearing. It was based solely on the statements of case and other documentary evidence filed by the Applicant.
12. The relevant test to be applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.
13. The issue before the Tribunal was whether dispensation, retrospectively or otherwise, should be granted in relation to requirement to carry out statutory consultation with the leaseholders regarding the works to prevent further water ingress. As stated in the directions order, the Tribunal is not concerned about the actual cost that has been incurred.
14. The Tribunal granted the application for the following reasons:
  - (a) the Tribunal was satisfied that the report of B Richards Fire Protections Consultants Limited has identified significant risks in the construction of the property that pose a health and safety hazard to the occupiers and are, therefore urgent in nature. These risks have to now be considered as paramount and have to be addressed in an urgent way in the post Grenfell Tower era.
  - (b) the Tribunal was satisfied that the Respondents have been kept informed of the need to carry out remedial repairs. The Tribunal was also satisfied that if the Applicant carried out statutory consultation, it is likely that the health and safety of the occupants in the property would be prejudiced.

- (c) the Tribunal was satisfied that the Respondents have been served with the application and the evidence in support and there has been no objection from any of them.
  - (d) importantly, the real prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred by making a separate service charge application under section 27A of the Act. The Tribunal noted that the majority of the cost of the remedial work was being met by the developer and, therefore, any financial prejudice to the leaseholders was significantly mitigated in this way.
15. The Tribunal, therefore, concluded that the Respondents were not be prejudiced by the Applicant's failure to consult and the application was granted as sought.
16. It should be noted that in granting this part of the application, the Tribunal makes no finding that the scope and estimated cost of the repairs are reasonable.

**Name:** Tribunal Judge I  
Mohabir

**Date:** 25 May 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).

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  - (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  - (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.

**Section 20ZA**

(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.