



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

Case reference : **LON/00BK/LDC/2015/0063**

Property : **52 Elgin Avenue, London, W9 2HA**

Applicant : **Mr D J & Mrs T Wheeler**

Representative : **ECFI Ltd**

Respondent : **The Lessees**

Representative : **In person**

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

Tribunal members : **Judge I Mohabir
Mr A Manson FRICS**

**Date and venue of
determination** : **17 June 2015
10 Alfred Place, London WC1E 7LR**

Date of decision : **23 June 2015**

DECISION

Introduction

1. The Applicants make an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for retrospective dispensation from the consultation requirements imposed by section 20 of the Act.
2. This application relates to proposed works to erect front and rear scaffolding to remove the existing slated roof, battens and felt from the mansard roof and replace it with a new covering together with lead flashings and skirts. In addition, repairs are required to an asphalt roof and roof terrace, repairs to brickwork or re-pointing where necessary and also making good and repairs to masonry mouldings to all windows where required.
3. The application states that the proposed works are required to be carried out as soon as possible because part of one property is uninhabitable and living conditions in another is less than desirable. Previous temporary roof repairs have proved to be ineffective.
4. It seems that the Applicant commenced statutory consultation under section 20 of the Act. However, having served a notice of intention, they failed to allow the Respondents the permitted period of not less than 30 days for them to make any observations on the proposed works. The Tribunal was not told when the notice of intention was served or provided with a copy of the notice. Apparently, one contractor was nominated by two of the Respondents and no objections were received from any of the other Respondents.
5. Nevertheless, on 6 May 2015, the Applicants served a notice of estimates on the Respondents containing two estimates and the correct period of not less than 30 days was validly allowed for in the notice. One observation was received about a suspected disparity between the two estimates and an explanation was provided by the Applicants.
6. The Applicants subsequently sought to reach agreement with all of the Respondents to waive the requirement to carry out statutory consultation. Having failed to do so, they made this application to the Tribunal.
7. On 27 May 2015, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. No objection to the application has been received from any of them. The Tribunal also directed that this application be determined on the basis of written representations only.

Relevant Law

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

Decision

9. The determination of the application took place on 17 June 2015 without an oral hearing. It was based solely on the statement of case and other documentary evidence filed by the Applicants. No evidence was filed by any of the Respondents nor have they participated in these proceedings in any way.

10. 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.

11. The Tribunal granted the application for the following reasons:
 - (a) the fact that there has been broad compliance by the Applicants with the consultation process.
 - (b) the fact that each of the leaseholders had been informed of the need to carry out the proposed remedial works and the reasons why.
 - (c) the fact that no leaseholder has objected to the proposed works.
 - (d) importantly, any 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 estimated or actual costs involved.

12. The Tribunal, therefore, concluded that the Respondents had not been prejudiced by the failure to consult by the Applicant and the application was granted as sought.

13. It should be noted that in granting this application, the Tribunal does not also find that the scope and estimated or actual cost of the repairs are reasonable. It is open to any of the Respondents to later challenge those matters by making an application under section 27A of the Act should they wish to do so.

Name: Judge I Mohabir

Date: 17 March 2014

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.