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

Case Reference : **LON/00AG/LDC/2018/0080**

Property : **52 Fellows Road, London NW3 3LJ**

Applicant : **52 Fellows Road Management Limited**

Respondent : **The leaseholders**

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

Tribunal Members : **Judge Professor R Percival
Mr J Barlow JP FRICS**

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

Date of Decision : **18 June 2018**

DECISION

Decisions of the tribunal

- (1) The Tribunal pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) grants dispensation from the consultation requirements in respect of the costs of erection of scaffolding to inspect the roof only.

Procedural

1. The applicant landlord applies for a dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 and the regulations thereunder in respect of works to inspect, and to rectify water ingress from the roof. The application was allocated to the paper track.
2. The Tribunal gave directions on 3 May 2018, which provided for a form to be distributed to the tenants to allow them to object to or agree with the application, and, if objecting, to provide such further material as they sought to rely on. The deadline for return of the forms was 14 May 2018. No forms have been received.

The property and the works

3. The property is a semi-detached Victorian house converted into four flats.
4. The applicant states that the top flat suffers water ingress whenever it rains. The application states that “the necessary repairs will be carried out as soon as we have a better idea of the underlying issue with the roof”. It states that quotations are being secured for scaffolding to investigate the state of the roof.
5. The possible repairs, however, are not adequately particularised in the application or any of the papers available to the Tribunal, as indeed the Tribunal would expect, given that the repairs necessary cannot, it seems, be ascertained until the roof has been inspected. There is, in an email, a suggestion that a “ballpark figure” for a new roof would be £9,000, but clearly there can be no determinate view as to whether a new roof is necessary or not in advance of inspection, a point apparently recognised by the applicant itself in the same correspondence.
6. There are no quotations for the cost of scaffolding provided in the papers. At one point, it is suggested that the cost is bound to be more than £1,000, that being the threshold for a section 20 consultation. The Tribunal agrees that scaffolding is likely to exceed that sum.

Determination

7. We allow the application, limited to the cost of scaffolding. Although no costs have been provided, inspection is clearly necessary as a matter of urgency, and if the cost of scaffolding secured as a result of this dispensation is excessive, a lessee may make an application to the Tribunal under section 27A, Landlord and Tenant Act 1985 (see paragraph 11 below).
8. As to the costs of repairs to the roof, we do not consider that we can properly consider an application for dispensation in respect of works the nature, extent and cost of which are currently wholly unascertained. In such circumstances, none of the leaseholders could properly determine the extent to which a dispensation may prejudice them.
9. We appreciate that it will be economical if such repairs as are found to be necessary following inspection are carried out immediately using the scaffolding in place. The proper course for the applicants, if they choose to proceed in that manner, is to carry out the works using the scaffolding erected for inspection purposes, and apply to this Tribunal for retrospective dispensation in respect of that work.
10. The Tribunal will grant dispensation, unless a lessee can demonstrate that they would suffer prejudice if the dispensation was not granted; and, if there is such prejudice, will still grant dispensation on terms that allow for the rectification of the prejudice demonstrated: *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854. This applies to the proper (if unfortunately incomplete) current application for a dispensation in respect of the cost of scaffolding; and would equally apply to a retrospective application, if made, as countenanced in paragraph 9 above.
11. This application relates solely to the granting of dispensation from undertaking the consultation process otherwise required by section 20 of the 1985 Act. If the lessees consider the cost of the works to be excessive or if the quality of the workmanship poor, or if costs sought to be recovered through the service charge are otherwise not reasonably incurred, then it is open to them to apply to the Tribunal for a determination of those issues under section 27A of the 1985 Act.

Name: Judge Professor Percival **Date:** 18 June 2018

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, 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.