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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AU/LDC/2017/0135**
Property	:	**St Williams Court, London N1 0GJ**
Applicant	:	**Islington Court Management Company Ltd**
Representative	:	**Fiona Docherty of James Andrew Residential, agents**
Respondents	:	**Ms Sarah Tuckman (Flat 15) Ms Suzanne Gainsley (Flat 23) And other leaseholders at St Williams Court**
Representatives	:	**Mr Sinclair, counsel for the lessees of Flats 2, 8, 82, 110, 118 and 120**
Type of application	:	**Section 20ZA L&T Act 1985 – to dispense with the requirement to consult lessees about major works**
Tribunal members	:	**Judge T Cowen Miss M Krisko FRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of order	:	**6 March 2018**

WRITTEN REASONS
for order made on 6 March 2018

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1. This is an application by the Applicant Landlord under section 20ZA of the Landlord and Tenant Act 1985 to dispense with the consultation requirements under section 20 of that Act.

2. These are the written reasons for the Tribunal's decision in this matter. The Tribunal's decision was communicated to the parties orally at the end of the hearing on 6 March 2018 and was contained in an order of the same date.

3. In summary, by our order, the tribunal dismissed the Applicant's section 20ZA application after permitting the Applicant to amend that application to cover works required to the green roof of the property in accordance with the Harris Associates Specification dated December 2017 ("the Works"). The Tribunal therefore refused to dispense with any of the consultations requirements in relation to the Works.

4. The amendment to the application had been consented to by the leaseholders at the 6 March 2018 hearing.

5. The Tribunal also made an order, with the consent of the Applicant, under section 20C of the Landlord and Tenant Act 1985, to the effect that all of the costs incurred by the Applicant in connection with these proceedings are not to be regarded as relevant costs to be taken in to account in determining the amount of any service charge payable by any of the leaseholders of the Property.

6. The Tribunal heard a great deal of evidence and argument over the course of 2 hearings from a number of separately represented and unrepresented parties. However, the reasons for the Tribunal's decision are relatively straightforward and turn only on one issue: there was no evidence at the hearing that the roof works were so urgently needed that the section 20 process could not be completed. In fact the expert surveyor, Mr Dobinson, instructed by some of the leaseholders gave evidence that it would be preferable to carry out the roof works in the summer months and that it would be inadvisable to carry them out in the March-May period. Since that would leave ample time for the section 20 process to be carried through to completion, there was therefore simply no need to dispense with that process under section 20ZA.

7. The hearing took place over two separate dates, because it became clear on the first day (31 January 2018) that the nature of the proposed works had changed, the leaseholders had not seen the new specification of works, the application needed amending and also that expert evidence was desirable on the substantive issues.

8. The represented leaseholders took the opportunity to instruct Mr Dobinson as their expert surveyor. He reported and attended at the second date of the hearing on 6 March 2018. The Applicant Landlord served a surveyor's report but elected not to instruct the expert to attend the hearing. Mr Dobinson was therefore the only expert available to give oral evidence and answer questions before the Tribunal on the central issue, namely: whether the roof repair works were sufficiently urgent that it would not practically be possible to carry out the consultation requirements in time.

9. The appropriate test for determining an application under section 20ZA is set out in the section itself namely if the Tribunal is "satisfied that it is reasonable to dispense with the requirements". This is a prospective application for dispensation. At the time of the application

and the hearings, the work had not yet commenced. It is implicit in the statutory wording of section 20ZA that the landlord should demonstrate that it would be impossible or unworkable or at least difficult to comply with the consultation requirements. It cannot be reasonable to dispense with requirements in circumstances in which the landlord has every opportunity to comply with the requirements and is easily able to do so. This point is alluded to in *London Borough of Southwark v Leaseholders of the London Borough of Southwark* [2011] UKUT 438 (LC) at paragraph 43(f) and in *Leaseholders of Foundling Court and O'Donnell Court v The Mayor and Burgesses of the London Borough of Camden & ors* [2016] UKUT 366 (LC). In cases where, unlike here, the landlord has gone ahead and done the works without consulting or in cases where the landlord has established that the consultation process cannot practicably be carried out, the leading Supreme Court case of *Daejan v Benson* [2013] 1 WLR 854 provides a prejudice test. In our judgment, the prejudice test does not arise in a prospective application (such as this one) if the landlord is unable to show that there is a reason to dispense with the consultation requirements in the first place. In any event, even if the prejudice test does apply, there is ample evidence of prejudice to the leaseholders if the consultation requirements are dispensed with. We make findings below as to that prejudice.

10. The Applicant Landlord's case was that urgent roof repairs are required. The roof needs renewing entirely. The urgency is because the disrepair is causing water ingress to the common parts and to some of the flats including flats 105, 106 and 110. The cost of the works will be the subject of a claim under the NHBC guarantee. The original specification of works which was the subject of the pre-amended section 20ZA application was to strip back limited areas of the green roof for inspection and repairs following a water leak in to Flat 134. Upon inspection, it was revealed that full roof replacement is now necessary. The resultant revised specification of works forms the basis for this amended application.

11. An additional feature of this building is that one side of the building comprises privately leased flats while the other side is operated by One Housing Group to provide rented social housing. This dispute involves only some of the private leaseholders. The leaks are said to affect the One Housing Group side of the building, but One Housing Group have chosen not to appear in the Tribunal and not to submit any written evidence or arguments. The Tribunal is satisfied that One Housing Group is aware of the proceedings. Ms Gainsley relied on the fact that One Housing Group were not at the hearing to give evidence of ongoing problems and that there was no evidence of ongoing problems at Flat 134 in support of her contention that the works were not so urgent as to require the dispensation. The Tribunal sees considerable force in those submissions.

12. The evidence of Mr Dobinson was broadly as follows. He agrees that the roof needed to be replaced. But his firm view was that it was not

sensible to carry out the work during the months of March to May, rather that the works should be carried out in the summer months. He agreed that the works did need to take place within the next few months, but not that they were so urgent that they could not wait until June/July. This would allow plenty of time for the consultation process to take place in the meantime. His opinion was that the cause of the problems on the roof is the workmanship of the basebuild construction when the building was originally erected. It was not the materials which were at fault but the way they were installed. Mr Dobinson had a number of concerns about the way the proposed replacement works were to be carried out. In his report, he posed a number of technical questions to the Applicant Landlord. They were not properly answered by the Applicant before or at the hearing. In the judgment of this Tribunal, those queries are precisely the sorts of matters which could and should be dealt with during the statutory consultation period.

13. Evidence was given on behalf of the Applicant Landlord by Mr Buxton. He agreed with Mr Dobinson's assessment of the works and the appropriate timing. However, he said that delaying the works would cause problems of further water ingress and require further costly treatment of mould and fungus growth in the common parts. When challenged, however, the Applicant landlord was unable to produce any evidence of these problems nor that they were caused by the defects in the roof. It was also apparent that a significant amount of the alleged damage to common parts related to the part of the building operated by One Housing Group. It was telling that they did not play any part in these proceedings nor offer any evidence.

14. One of the leaseholders, Ms Gainsley, gave evidence that water leaks have ceased and that the common parts have now been repainted. She also pointed out that the Garland Company Specification of Works dated 22 December 2017 at 2.3.3 recommended that the roof membrane should be applied "when the ambient air temperature, roll temperature and substrate temperature are all 10 degrees or above. **Application in cool temperatures will negatively affect adhesion**" (our emphasis). This supports Mr Dobinson's opinion that the work should not be carried out until the summer months.

15. A report on the roof was commissioned by Mr Mazhar Farid on behalf of the Applicant Landlord. This was produced on 19.02.18 by Rob Griffin of the Garland Company. On page 8 of the report, Mr Griffin said: "Overall the roof has failed drastically and requires replacement as a matter of urgency. There is significant quantities of water held within the system, and the condition of the vapour barrier is the only element stopping serious ingress into the building occurring." Neither Mr Griffin nor Mr Farid attended the hearing. It was therefore not possible for the Tribunal or the parties to put to either of them any of the points made by Mr Dobinson or any other questions. For example, the Tribunal was unable to obtain Mr Griffin's comment on the opinion of Mr Dobinson that the works could and should be carried out in the

summer moths of this year. We have no way of knowing what Mr Griffin meant by "urgency" in this context. The Tribunal also could not tell what plans Mr Griffin and the Applicant Landlord were making to dry out the trapped water from the existing structure. Mr Dobinson had a list of several questions about the specifications for the works which the Applicant Landlord was unable to answer at the hearing, despite those questions being listed on page 17 of Mr Dobinson's report and served on the Applicant landlord in advance of the second hearing.

16. The Tribunal accepts the evidence of Mr Dobinson and prefers his evidence to that of Mr Buxton and the report of Mr Griffin whether they differ. It follows that the Applicant Landlord has not established that it would be reasonable to dispense with the consultation requirements, because there is plenty of time between the date of the order refusing dispensation (6 March 2018) and the date on which the works need to commence (June/July 2018) for the consultation process to take place.

17. Another issue which received attention at the hearings of this matter was the question whether the necessary repairs were covered by the Premier housebuilding guarantee. This was not an issue on which we have jurisdiction (nor enough evidence) to decide, but our order made on 6 March 2018 should give plenty of time for that matter to be fully investigated before the date when the works need to commence. There is a strong likelihood of prejudice being suffered by the leaseholders if urgent works are done without fully exploring a claim under the guarantee.

18. A number of leaseholders at the hearing stated that they wanted an opportunity to propose different contractors from those chosen by the Applicant Landlord. They gave cogent reasons for wanting to do so. In particular, counsel for a number of the leaseholders pointed out that the proposed contractors, D G Stone, were not specialist roofers and that if they were to carry out work on an urgent basis without consultation the guarantee may be invalidated. That would potentially be another substantial prejudice to the leaseholders. It is not for us to decide on this application who the contractors should be. But this is a further point to reinforce that an important purpose will be served by the consultation process, as intended by the statute, and that it would therefore not be reasonable to dispense with the consultation requirements in a case where there is plenty of time to carry them out.

19. Counsel for some of the leaseholders also pointed out that paragraph 3.6 of Schedule 9 to the leases excluded from the payable service charges "all costs and expenses in respect of or relating to the construction or laying out of the Estate and the Building...and the cost of remedying any defect in such construction or laying out all which items shall be the liability of the Landlord from its own resources." While the Tribunal's task is not to decide on this application whether the cost of the proposed works are recoverable, this leaves an important issue on which the leaseholders should be able to make observations as part of a consultation process.

20. For all the above reasons, the Tribunal made the order on 6 March 2018.

Name: Judge T Cowen
Miss M Krisko FRICS **Date:** 10 May 2018

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).