12755

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

Case Reference	:	**LON/00AW/LSC/2018/0134**
Property	:	**67 and 69 Eardley Crescent, London SW5 9JT**
Applicant	:	**Printkeen Ltd, represented by Red Carpet Estates**
Respondent	:	**The leaseholders set out in the appendix to the application**
Type of Application	:	**Dispensation from consultation requirements under Landlord and Tenant Act 1985 section 20ZA**
Tribunal Members	:	**Judge Professor R Percival**
Venue of Deliberations	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**21 May 2018**

DECISION

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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 works the subject of the application.

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 electrical works relating to common parts. The application was allocated to the paper track, subject to the parties requesting an oral hearing. None have.

2. The Tribunal gave directions on 9 April 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 24 April 2018. No forms have been received.

The property and the works

3. Number 67 Eardley Crescent is described in the application as a "converted block of flats", containing 8 flats. These flats are numbered A to H. Although the application is not entirely clear, it seems that four flats located in number 69 (flats J to M) have the use of common parts in number 67. It appears that the eight flats in number 67 pay, together, 69% of the expenditure referable to the service charge, and the four flats in number 69 pay 31%.

4. An electrical inspection was undertaken, and in a report dated 7 February 2018, the installation was found to be unsatisfactory, on the basis that several dangerous or potentially dangerous conditions were identified. The defects are summarised in the application as a failure of the fuse board, which therefore required replacement.

5. However, the relationship between the work undertaken and the work required as an emergency measure as a result of the inspection is not clear to the Tribunal. The application describes the work as

> "Emergency health and safety works to the electrical installation following the upgrade of the fuse board on 20 March 2018 as per the EICR certificate. Works will reinstate the emergency lighting and common parts electricity."

6. In answer to the question asking the applicant to explain why the matter is urgent, the applicant wrote that following the inspection,

> "there were several items which were highlighted as urgently required ... These works have been carried out but in doing so this has had an effect on other parts of the installation which now require rewiring. It was always intended to replace the existing emergency lighting as it failed on the certificate and whilst this particular item may not seem to be urgent the way in which the lighting circuit is rewired will allow sufficient capacity for the emergency lighting to be run off the same circuit. ... The existing emergency lighting circuit would also have to be rewired but the intended lighting incorporates emergency lighting thereby making the bulkhead emergency lighting redundant."

7. The work itself is described in an email to one of the leaseholders contained in the bundle as:

> "1/remove all existing lights and cabling
> 2/rewire lighting / complete the emergency lighting facility
> 3/fit emergency key switch facility
> 4/supply and fit 7 no led light fittings with occupancy sensors
> 5/blank off all switches
> 6/install porch light
> 7/cables to be installed in trunking containment and concealed in ceiling were possible."

8. Two quotations were, the applicant states, received, and the cheaper of the two chosen (it also being the case that that contractor could start more immediately). It appears that the work was undertaken between 27 March and about 11 April 2018.

9. It is clear that the applicant is postulating that there was original work required as an emergency matter, and then further work that it became necessary or desirable to undertake as a knock-on effect. What is not apparent to the Tribunal is the nature of this, apparently unanticipated, relationship between the emergency work and the subsequent work.

10. The application should have been much clearer in delineating the work in each of (what appears to be) the two phases. One aspect of this lack of clarity is that the Tribunal is unclear as to whether the works comprised a single set of works which, dispensation aside, would have required a single section 20 consultation exercise, or whether they were two distinct sets of work.

Determination

11. The only task for the Tribunal is to determine whether dispensation should be granted. The defects in the application indicated above may have given the Tribunal pause for thought, but on analysis we consider that dispensation must be granted.

12. It appears to be clear that, whatever the reason for bringing the full work forward, it was always intended to carry out what seems to be described in the passage quoted at paragraph 6 above as the less urgent work. Although we are not given a time frame for that original intention, it seems clear that, in those circumstances and on the face of it, the Tribunal could not find that the leaseholders had been prejudiced by the decision to undertake the work as it has been done.

13. The fact that no objections have been received, further, means that no lessee is able to demonstrate any prejudice. As a result, we must allow the application: *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854.

14. This application relates solely with the granting of dispensation from undertaking the consultation process otherwise required by section 20 of the 1985 Act. If they 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 the leaseholders to apply to the Tribunal for a determination of those issues under section 27A of the 1985 Act.

Name: Judge Richard Percival **Date:** 21 May 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.