



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

Case reference : **LON/00AM/LDC/2019/0051**

Property : **The Northiam Estate, London, E9**

Applicant : **Northiam Management Ltd**

Representative : **Ringley Law LLP**

Respondent : **The Estate Charge Payers**

Representative : **N/A**

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

Tribunal member : **Tribunal Judge I Mohabir
Ms M Krisko FRICS**

**Date and venue of
determination** : **8 May 2019
10 Alfred Place, London WC1E 7LR**

Date of decision : **8 May 2019**

DECISION

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 retrospective dispensation from the consultation requirements imposed by section 20 of the Act.
2. The Northiam Estate, London, E9 (“the property”) is described as a consisting of the common parts of the estate, which is comprised of leasehold houses and flats totalling 107 units. The lessees pay an estate charge towards the maintenance of the common parts of the estate.
3. In late August 2018, the Applicant’s managing agents were notified of a blockage affecting the underground drains serving 15 and 17 Albert Close, London, E9, which are two flats on the estate. The contractor instructed to clear the blockage recommended that a CCTV survey be undertaken of the drains.
4. The survey was carried out on 3 September 2018. This revealed that the drains were damaged, which included displaced joints, cracks and breaks. These are set out in a report of the same date and are supported by photographic evidence of the damage to the drains.
5. Excavation and repairs works were carried out and completed between 17 and 21 December 2018. In doing so, further damage to the drains was identified by the contractor who advised that all of the pipe work between 15 and 17 Albert Close needed to be replaced. Those works were then completed on 17 April 2019.
6. Subsequently, the Applicant made this application seeking retrospective dispensation in relation to the requirement under section 20 of the Act to fully consult with the leaseholders on the basis that the drain damage led to the sewer flooding into 17 Albert close posing a serious health and safety risk to the occupiers who were forced to vacate the premises.
7. On 3 April 2019, 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.
8. No Respondent has filed any objection to the application.

Relevant Law

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

Decision

10. The determination of the application took place on 8 May 2019 without an oral hearing. It was based solely on the statement of case and other

documentary evidence filed by the Applicant. No evidence was filed by any of the Respondents.

11. 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.
12. The issue before the Tribunal was whether retrospective dispensation should be granted in relation to requirement to carry out statutory consultation with the leaseholders regarding the cost of drain repairs. It should be noted that the Tribunal is not concerned about the actual cost that has or will be incurred, as that is not within the scope of this application.
13. The Tribunal granted the application the following reasons:
 - (a) the fact that each of the leaseholders has been kept informed of the drain damage and the requirement to carry out the repairs.
 - (b) the fact that each of the leaseholders had been served with a copy of the application and documents in support.
 - (c) no leaseholder has objected to the application.
 - (c) based on the investigations carried out by the contractor who carried out the excavation and repair of the drains, the Tribunal was satisfied that the drains posed a health and safety risk to the occupiers of 17 Albert Close without the necessary repair being carried out. The risk was sufficiently significant to require the occupiers to vacate the premises until the repairs had been carried out. The Tribunal was also satisfied that any further delay in carrying out the repairs would have caused the occupiers of 17 Albert Close further undue hardship by not being able to occupy the premises.
 - (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 actual costs incurred. The Tribunal was told that there is a strong likelihood that the cost of the repair works will be covered by an insurance claim. If so, the cost of the works will not be recovered from the Respondents.
14. The Tribunal, therefore, concluded that the Respondents would not be prejudiced by the failure to consult by the Applicant and the application was granted as sought.

15. 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. It is open to any of the Respondents to later challenge those matters by making an application under section 27A of the Act in the event that this becomes necessary.

Name: Tribunal Judge I
Mohabir

Date: 8 May 2019

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.