



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

**Case reference** : **LON/00BD/LDC/2019/0007**

**Property** : **2-3 Shakespeare Terrace, Lower  
Richmond Road, Richmond, Surrey  
TW9 4PL**

**Applicant** : **Southern Land Securities Ltd**

**Representative** : **Together Property Management  
Ltd**

**Respondent** : **Miss Scott (Flat A)  
Mrs S Holliday (Flat B)  
Mr P Welsh (Flat C)  
Ms Matysiak (Flat D)  
Mr Dhillon (Flat E)  
(Leaseholders)**

**Representative** : **Unrepresented**

**Type of application** : **To dispense with the requirement  
to consult with lessees about major  
works**

**Tribunal member(s)** : **Judge A Sheftel**

**Date and venue of  
Paper Determination** : **11 March 2019 at 10 Alfred Place,  
London WC1E 7LR**

**Date of decision** : **11 March 2019**

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**DECISION**

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### **Decision of the tribunal**

- (1) The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works detailed at paragraph 8 below.**
- (2) In granting dispensation in respect of the Application, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

### **The application**

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the 1985 Act) from the consultation requirements required by Section 20 of the 1985 Act.
2. Directions were issued on 16 January 2019. These provided that the Tribunal will determine the application on the basis of written representations, unless any party makes a request for an oral hearing within 7 days of that date.
3. By email to the Tribunal dated 25 January 2019, the Applicant's representative confirmed that the leaseholders had been served with the application form and directions and copies of the application form and directions had been displayed in the communal hallway of the property.
4. No requests have been received for an oral hearing and the application is therefore determined on the papers received.
5. The only issue for the Tribunal is if it is reasonable to dispense with any statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

### **The law**

6. The relevant section of the 1985 Act reads as follows:

“20ZA Consultation requirements

(1) Where an application is made to the appropriate 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.”

7. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson* [2013] UKSC 14. In summary the Supreme Court noted the following:
- The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
  - The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
  - Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
  - The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
  - The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
  - The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
  - The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
  - Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

## **Background**

8. According to page 8 of the application, the Applicant seeks dispensation in respect of the following works:
- Gain access to the garden square via a fixed tower scaffold, by gaining access over the main roof;
  - Clear box gutter of all debris on 2No roofs;
  - Unblock outlet on 2No roofs;
  - Apply 1 square metre of torch on felt to the corrugated roof areas (2No roofs);
  - Extend downpipe to redirect rainwater on 2 No roofs;
  - Dismantle fixed tower scaffold;
  - Leave site clean and tidy.
9. According to the Applicant's statement of case, the above works arose out of reports of water ingress to Flat D on 25 June 2018. A surveyor was instructed to locate the cause of the ingress – who advised that it would be necessary to undertake an inspection of the roof and that scaffolding would be required.
10. According to the application, the cost of the scaffolding and surveyor's visit was over the consultation limit, but the Applicant went ahead in order to locate the source of the problem. However, leaseholders were made aware that the Applicant would be making a dispensation application in respect of the scaffolding and surveyor's costs. The surveyor produced a specification of works and the Applicant obtained a quotation from the contractors who had erected the scaffolding. As the scaffolding was already in situ, the Application decided to go ahead and has sought to include the costs of the works in the present application – although it appears from the statement of case that some additional scaffolding was also required. It appears that two quotations were obtained in respect of the initial scaffolding costs, but only one in respect of the resulting works.
11. The application notes that although no Section 20 notices have been served on leaseholders in respect of the above works, the Applicant did send numerous letters and emails to Leaseholders notifying them of the cost and progress in dealing with the matter. The history of correspondence is set out in the Applicant's statement of case.

12. Although the statement of case records that the Applicant received calls from leaseholders with concerns over the cost of the scaffolding, the Applicant has received no objections to the application.

### **Decision**

13. On the facts of the present case, the Tribunal notes, in particular, that:
- (1) none of the respondents has objected to the application; and
  - (2) no evidence has been submitted identifying the type of prejudice referred to in paragraph 6 above.
14. In the circumstances, it is considered that it is reasonable to dispense with the consultation requirements for the specific works. Accordingly, the Tribunal grants dispensation from the consultation requirements of S.20 of the 1985 Act in respect of the works set out at paragraph 8 above.
15. In granting dispensation in respect of the application, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

**Name:** Judge A Sheftel

**Date:** 11 March 2019

### **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).