



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

Case reference : **LON/00AR/LDC/2020/0037 P**

Property : **Lapwing House, Curlew House,
Plover House, Jacksnipe House and
Redshank House, Capstan Drive
Rainham RM3 9JG**

Applicant : **Connexion (Rainham)
Management Company Ltd**

Representative : **Warwick Estates**

Respondent : **The long leaseholders at the
properties named in the
application**

Representative : **None advised**

Type of application : **To dispense with the statutory
consultation requirements under
section 20ZA Landlord and Tenant
Act 1985**

Tribunal members : **Judge Pittaway**

Date of decision : **22 June 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the applicant and not objected to by any respondent. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper. The documents to which the tribunal was referred are in two electronic bundles of 71 and 26 pages respectively, the contents of which the tribunal has noted. The decision made is set out below.

DECISION

The Tribunal grants the application for retrospective dispensation from further statutory consultation in respect of the subject works, namely remedial work to the roof, box gutter and balconies to prevent water ingress.

The applicant should place a copy of this decision together with an explanation of the leaseholders' appeal rights on its website within seven days of receipt and maintain it there for at least three months, with a sufficiently prominent link to both on its home page. It should also display copies in a prominent position in the common parts of the Properties.

This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonableness and/or the cost of the work.

The Application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the **Act**") for retrospective dispensation from consultation in respect of certain major works, namely remedial work to the roof, box gutter and balcony original installation to resolve an ongoing water ingress problem. The work has already been carried out.
2. By directions dated 10 March 2020 (the "**directions**") the tribunal directed the applicant to send each of the leaseholders the application and the tribunal's directions and display the same in the common parts of the Properties, confirming to the tribunal that it had done so. The applicant confirmed to the tribunal on 19 March 2020 that it had complied with this direction.

3. The directions required any leaseholder who opposed the application should tell the tribunal and send the applicant a statement responding to the application together with any documents they wished to rely on. The tribunal has received no such statements of objection and on 1 May 2020 the applicant confirmed to the tribunal that it received no objections.
4. The directions provided that the tribunal would decide the matter on the basis of written submissions unless any party requested a hearing. No such request has been made and on 1 May 2020 the applicant confirmed to the tribunal that it was content to proceed with an electronic hearing.

The applicant's case

5. The applicant is the management company responsible for the repair of the properties under the terms of the leases under which the properties are held.
6. In its application the applicant explained that the roof of the properties had been lifted to identify the water egress issue, and while access to the roof was in place and the roof lifted it was more cost-effective to continue with the necessary repairs. A specification and form of tender had been completed by Day Associates in May 2019 for anticipated works and the applicant states that the most competitive contractor had been instructed. However due to the nature of the findings when the roof was lifted, and the scope of the works having to be amended while the contractor was on-site, any previous consultation was considered to have been void be reason of the change in scope of the works.
7. In the application the applicant submitted that care was taken not to prejudice the leaseholders and to ensure cost efficiencies during the works to resolve the water ingress issues. The applicant had sought to make a claim from NHBC for the cost of the works which NHBC rejected as it would not allow a claim for work that had been completed, other than the original construction.

The Respondents' case

8. No respondent objected to the application

Determination and Reasons

9. Section 20ZA(1) of the Act provides:
“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.”

The whole purpose of section 20ZA is to permit a landlord to dispense with the consultation requirements of section 20 of the Act if the tribunal is satisfied that it is reasonable for them to be dispensed with. Such an application may be made retrospectively as it has been made here.

10. The Tribunal has taken account the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 in reaching its decision.
11. There is no evidence before the tribunal that the respondents were prejudiced by the failure of the applicant to comply with the consultation requirements. The tribunal is therefore satisfied that it is reasonable to dispense with all or any of the consultation requirements in relation to the remedial work to the roof, box gutter and balcony original installation to resolve an ongoing water ingress problem.
12. Whether the works have been carried out to a reasonable standard and at a reasonable cost are not matters which fall within the jurisdiction of the tribunal in relation to this present application. This decision does not affect the tribunal’s jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonableness and /or cost of the works.

Name: Judge Pittaway Date: 22 June 2020

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.

4. 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.