



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

Case Reference : **LON/00BK/LDC/2021/0056**

HMCTS Code : **P: PAPER REMOTE**

Property : **46 Upper Grosvenor Street,
London WQ1K 2NW**

Applicant : **No. 46 Management Company
Limited**

Respondent : **Leaseholders of the property**

Type of Application : **Dispensation from consultation
requirements under Landlord and
Tenant Act 1985 section 20ZA**

Tribunal Members : **Judge Professor R Percival**

Venue : **Remote paper determination**

Date of Decision : **24 May 2021**

DECISION

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 landlord submitted on 25 February 2021 an application for dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 and the regulations thereunder in respect of the replacement of a boiler flue and associated works.
2. The Tribunal gave directions on 15 March 2021, which provided for a form to be distributed to those who pay the service charge 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, to the Applicant and the Tribunal, was 1 April 2021.
3. The Applicant’s agent confirmed that the relevant documentation had been hand delivered, and posted as notices, as required by the directions in time.
4. No such response has been received by the Tribunal. Although the Applicant has not confirmed that it has not received replies, I assume that that is the case.
5. This determination has been delayed as a result of the Applicant being required to produce a proper bundle in the terms set out in the directions. While the bundle now available is in a single document with page numbers, the internal references to page numbers do not always seem to tally with the bundle as it is presented. It is also not in the order indicated in the directions, and is in a somewhat eccentric in form. It is nonetheless sufficient for this decision.

The property and the works

6. The property is a purpose built 1930s block comprising 23 flats. It is described as being “essentially two blocks joined by a basement communal corridor with separate entrances in the front ... and rear”.
7. There is a full description of the events leading to the application in the bundle. Only a brief summary is necessary here.
8. Heating and hot water is provided by a communal boiler in the basement. As a result, initially, of water ingress into one of the flats

being noted by a porter, the Applicant initiated an investigation, the result of which was that the flue serving the communal boiler was found to be defective. In addition to the initial investigation by one of the Applicant's approved building contractors, it proved necessary to instruct a specialist chimney contractor and specialist boiler firm. The work required scaffolding. The installation of a new boiler flue and associated works have now been completed.

9. An overall cost for the works is not provided in the narrative account of the works, but the breakdown given by the contractors suggests that the total is £41,470, including VAT.

Determination

10. The Tribunal is concerned solely with an application under section 20ZA of the 1985 Act to dispense with the consultation requirements under section 20 of the same Act.
11. In the first place, there is a clear element of urgency. The defects in the flue, which are clearly documented by reports from the chimney specialist and photographs, were causing moisture arising from the operation of the boiler to cause significant damage to some of the flats.
12. Secondly, no responses have been received from any of the leaseholders. It is therefore clear that no leaseholder has sought to claim any prejudice as a result of the consultation requirements not having been satisfied. Where that is the case, the Tribunal must, quite apart from the urgency adverted to above, allow the application: *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854.
13. This application relates solely to the granting of dispensation. If the leaseholders consider the cost of the works to be excessive or 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 them to apply to the Tribunal for a determination of those issues under section 27A of the Landlord and Tenant Act 1985.

Name: Judge Prof Richard Percival **Date:** 24 May 2021

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).

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.