



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

Case Reference : LON/00AW/LDC/2018/0076

Property : 17 Holland Park, London W11 3TD

Applicant : Northumberland and Durham
Property Trust Limited

Respondent : The leaseholders

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

Tribunal Members : Judge Professor R Percival
Mr J Barlow JP FRICS

Venue of Deliberations : 10 Alfred Place, London WC1E 7LR

Date of Decision : 18 June 2018

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 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 the replacement of a communal heating and hot water boiler. The application was allocated to the paper track.
2. The Tribunal gave directions on 24 May 2018. Directions were originally issued on 27 April 2018, but were apparently not received by the applicant. The directions 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 8 June 2018. No forms have been received.

The property and the works

3. The property is mid nineteenth century grade II listed house, converted in 10 flats over five floors.
4. Originally, all ten flats were connected to a communal heating and hot water system. There has been a gradual move to individual systems in each flat, which has been facilitated by major works (which were subject to a full section 20 consultation process) in 2016. Now, only two flats remain serviced by the communal system, and these two both have applications for listed building consent to install individual systems pending. In late March or early April 2018, the communal boiler failed, and is beyond repair. The landlord has accordingly installed a replacement boiler of a capacity suitable for the supply of water and heating to two flats only.
5. The work has been undertaken, at a cost of £3,036 plus VAT.

Determination

6. We allow the application. In the first place, it appears that the works were, indeed, urgent, as the two flats would otherwise have been without hot water and heating. The papers, indeed, suggest that the residents were, for a period, staying in hotels.

7. Secondly, no objections have been received. Accordingly, no lessee has sought to demonstrate that they would suffer any prejudice as a result of us granting dispensation. As a result, we must allow the application: *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854.
8. This application relates solely to the granting of dispensation from undertaking the consultation process otherwise required by section 20 of the 1985 Act. If the lessees 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 them to apply to the Tribunal for a determination of those issues under section 27A of the 1985 Act.

Name: Judge Professor Percival **Date:** 18 June 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.