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

Case Reference : LON/00AZ/LDC/2017/0077

Property : 39 Endwell Road, London SE4 2NE

Applicant : Waterglen Limited, represented by
Parkfords Management Limited

Respondent : (1) Ms A Burrows (flat A)
(2) Mr S Sutherland (flat B)
(3) Ms A Rhodes (flat C)

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

Tribunal Members : Judge Richard Percival
Mr N Martindale FRICS

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

Date of Decision : 15 August 2017

DECISION

Decisions of the tribunal

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 applied on 17 July 2017 for a dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 (“the 1985 Act”) and the regulations thereunder in respect of roof repair works. The top floor flat is currently suffering water ingress. The application was allocated to the paper track.
2. The Tribunal gave directions on 21 July 2017, which provided for a form to be distributed to the leaseholders 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 forms were to be sent to the Tribunal. The deadline for return of the forms was 7 August 2017. No forms have been received. The applicant has, however, produced an email from Ms Rhodes, the leaseholder of the top floor flat, dated 18 July 2017.

The property and the work

3. The property contains three flats. No other description is provided in the application.
4. The applicant states that a notice of intention to carry out works was sent to the respondents on 17 July 2017. Dispensation is sought on the basis that it would allow scaffolding currently in place at the front of the building to be used for the roof repair, thus saving costs; to prevent further damage occurring to the top floor flat; and to prevent further deterioration to the roof.
5. A quotation from a contractor, PML Construction Limited, has been produced by the applicant, which gives some indication of the nature of the work.
6. The quotation states that:

“Following our recent site visit we found there was no tiles cut up the parapet wall meaning the exiting lead flashings have sunk and pulled them out the wall. We suggest to install new cut tiles to prevent this happening again. We also need to

replace the existing flashing re-render the parapet wall. There will need to be scaffolding at the back”

7. The total cost is £3,499.20, including VAT.
8. In her email of 17 July, Ms Rhodes does not resist the application. She does, however, ask:
 - (i) Whether it is possible to obtain another quotation;
 - (ii) Whether it is possible to undertake the job without scaffolding at the front of the property;
 - (iii) Whether it is possible for a temporary repair to be undertaken, to prevent further water ingress; and
 - (iv) Whether replacement tiles are necessary, although she accepts that the flashings need replacing.
9. On the other hand, Ms Rhodes also makes it clear that she considers the repairs urgent – she adverts to her concerns that the water may damage the electrical supply in her flat and thereby present a danger of electrocution, and states that “first and foremost, there’s a real risk of personal injury if this is not handled quickly.”
10. The applicant produces an email from the proposed contractor indicating that no temporary repair is necessary.

Determination

11. The Tribunal reminds itself that the sole issue for determination is whether it is reasonable to dispense with the consultation requirements imposed by and under section 20 of the 1985 Act.
12. None of the respondents have returned a form to indicate opposition to the application.
13. Ms Rhodes raises issues in her email – the provision of alternative quotations, the extent of the work necessary – which the section 20 consultation process is clearly suited to deal with. However, she is also clear that the urgent, indeed overriding, need is for the works to be carried out rapidly.
14. In these circumstances, we consider that the urgency of the situation is such that dispensation from the consultation requirements is warranted.

15. If the cost of the works is 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 the leaseholders to apply to the Tribunal for a determination of those issues under section 27A of the 1985 Act.

Name: Judge Richard Percival **Date:** 15 August 2017

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.