



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

**Case Reference** : **LON/00AF/LDC/2019/0161**

**Property** : **Babbacombe House Babbacombe  
Road, Bromley BR1 3LW**

**Applicant** : **Premier Ground Rents No 4 Limited**

**Representative** : **Pinnacle Property Management Ltd**

**Respondents** : **The lessees as listed on Appendix 1 to  
the application**

**Representative** : **N/A**

**Type of Application** : **For the dispensation from the  
requirements to consult lessees  
about major works – S20ZA  
Landlord and Tenant Act 1985**

**Tribunal Members** : **Patrick M J Casey MRICS**

**Date and venue of  
Hearing** : **Paper determination on 15 October 2019  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **23 October 2019**

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**DECISION**

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## **Decision of the tribunal**

1. The tribunal grants the applicant dispensation from the statutory consultation requirements of S20 of the Landlord and Tenant Act 1985 (“the Act”) in respect of works to be carried out to Babbacombe House, 2 Babbacombe Road, Bromley BR1 3LW (“the building”) to resolve the rainwater leaks affecting flats 4 and 8.

## **The background**

2. From the initial completion of this development in 2015 Flats 4 and to a lesser extent 8 had experienced rain water leaks. These were investigated as snagging issues by the developer and then freeholder St Pier Limited and plumbing problems were ruled out. A problem with the middle area of the roof was then identified and St Pier proposed erecting scaffolding for access to fully investigate and effect necessary repairs. A Stage 1 Notice of Intention to carry out works under S20 was served on leaseholders on 19 July 2016 but nothing came of this as the freehold was sold to the applicant in August 2016.
3. The applicant’s, managing agents, Pinnacle Property Management Ltd, continued to investigate the problem they inherited including obtaining reports from surveyors and leakage detection specialists. Various minor potential sources of leaks were reported on including gutters and poorly fitted windows but despite these being rectified including flat 8 replacing a window the problems persisted. Finally Pinnacle decided in July 2019 to erect scaffolding and fully investigate the roof. The appointed contractor then identified a defect with the area between the edge of the roof and a dormer and/or where the dormer met the main roof. The recommendation of the contractor was to strip back the entire section and carry out necessary repairs. They quoted a total price for the works of £2,956 plus VAT including £635 plus VAT for the scaffolding and £321 plus VAT for the required licence in respect of Flat 4. Similar works were likely to be needed at flat 8 but the leaking dormer window there is located above the main entrance and further scaffolding was needed to fully investigate and access for repairs.
4. On 9 September 2019 Pinnacle sent to all leaseholders a Stage 1 Notice of Intention to carry out the works as advised by their contractor. The consultation period for the notice expired on 10 October and as the second stage of the consultation process could not start before then Pinnacle decided in the hope of avoiding delaying the repairs to apply to the tribunal for dispensation from the consultation requirements and wrote to all leaseholders to advised them that they had done so again on 9 September.
5. In fact the application for dispensation from the consultation provisions of S20 of the Act was not made until 13 September 2019 and Directions in respect of this application were made by the tribunal on 18 September 2019.

These provided the leaseholders with an opportunity to agree or oppose the application by completing a form included in the directions to advise their support of or opposition to the application to the tribunal. The Directions required the applicant to send to each lessee a copy of the application and the Directions and also to display both documents in the common parts of the building. A copy of a letter from Pinnacle to all leaseholders dated 24 September 2019 appears to show that this direction was complied with. None of the lessees at the block have completed and returned the form to the tribunal indicating opposition to the application.

6. The directions provided for the application to be determined on the papers directed to be submitted to the tribunal unless any of the parties requested an oral hearing; none did and the tribunal considered the application and the supporting documentation on 15 October 2019. No inspection of the property was thought necessary by the tribunal given the information in the hearing bundle and no party asked for one.
7. In the application form the property is described as a converted office building comprising of 11 apartments on ground, first and second floors.
8. Details of the statutory provisions relevant to this application are set out in Appendix 2 to this decision.

### **The tribunal's decision**

9. The leading authority in relation to s.20ZA dispensation requests is *Daejan Investments Ltd v Benson* [2013] 1 WLR 845 (“Benson”) in which the Supreme Court set out guidance as to the approach to be taken by a tribunal when considering such applications. This was to focus on the extent, if any, to which the lessees were prejudiced in either paying for inappropriate works or paying more than would be appropriate, because of the failure of the landlord to comply with the consultation requirements. In his judgement, Lord Neuberger said as follows:
  44. Given the purpose of the Requirements is to ensure that the tenants are protected from (1) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(i) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements.
  44. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the Requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the

position that the legislation intended them to be – ie as if the Requirements had been complied with.

10. None of the leaseholders is opposed to the application nor suggests that the works to be carried out are inappropriate or unnecessary. Nor is there any evidence that the leaseholders will be asked to pay more than is appropriate for the cost of the works.
11. The factual burden of identifying some relevant prejudice is on the leaseholders. They need to show that they have been prejudiced by the failure of the landlord to comply with the statutory consultation procedure. If a credible case of prejudice is established, then the burden is on the landlord to rebut that case.
12. The tribunal is satisfied that no relevant prejudice has been identified. Whilst compliance with the consultation procedure would have enabled the leaseholders to suggest alternative contractors and make observations on quotes received, there is no evidence to suggest that failure to comply with the consultation requirements will lead to the applicant incurring costs in an unreasonable sum, or lead to works being carried out that fall below a reasonable standard. No alternative quotes have been provided that would support such a contention.
13. That these works are urgently required is clear as in the tribunal's experience rain water ingress into flats in a building can, if not treated promptly, lead to serious damage to the fabric of the building and the decorations of the flats in question as well as potentially rendering them uninhabitable. There is nothing before the tribunal to suggest dispensation should not be granted and the tribunal is satisfied that it is reasonable to dispense with requirements of the Service Charge (Consultation Requirements)(England) Regulations 2003. Nothing in this decision to grant dispensation should be taken as limiting any leaseholder's rights to challenge a subsequent service charge demand on any grounds save as to compliance with the consultation requirements.

**Name:** P M J Casey

**Date:** 23 October 2019

**APPENDIX 1**  
**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.

**APPENDIX 2**  
**RELEVANT LEGISLATION**

**Landlord and Tenant Act 1985**

20ZA. Consultation requirements: supplementary

- (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.

**Service Charges (Consultation Requirements) (England) Regulations 2003.**

**Part 2 - consultation requirements for qualifying works for which public notice is not required**

*Notice of intention*

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—
  - (a) to each tenant; and
  - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall—
  - (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
  - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
  - (c) invite the making, in writing, of observations in relation to the proposed works; and
  - (d) specify—

- (i) the address to which such observations may be sent;
  - (ii) that they must be delivered within the relevant period;  
and
  - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

#### *Inspection of description of proposed works*

- 2.** (1) Where a notice under paragraph 1 specifies a place and hours for inspection—
- (a) the place and hours so specified must be reasonable; and
  - (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

#### *Duty to have regard to observations in relation to proposed works*

- 3.** Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

#### *Estimates and response to observations*

- 4.** (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a

recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—
  - (a) from the person who received the most nominations; or
  - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
  - (c) in any other case, from any nominated person.
  
- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—
  - (a) from at least one person nominated by a tenant; and
  - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).
  
- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
  - (a) obtain estimates for the carrying out of the proposed works;
  - (b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—
    - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
    - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and



- (c) make all of the estimates available for inspection.
- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
  - (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
  - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
  - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
  - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
  - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
  - (a) each tenant; and
  - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—

- (a) specify the place and hours at which the estimates may be inspected;
  - (b) invite the making, in writing, of observations in relation to those estimates;
  - (c) specify—
    - (i) the address to which such observations may be sent;
    - (ii) that they must be delivered within the relevant period; and
    - (iii) the date on which the relevant period ends.
- (11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

*Duty to have regard to observations in relation to estimates*

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

*Duty on entering into contract*

6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—
- (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
  - (b) where he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.