



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

Case Reference: LON/00AY/LDC/2020/0195 P

HMCTS code: P: PAPERREMOTE

Property: Flats 1-2, 4 Dalberg Road, London SW2
1AN

Applicant: The Mayor and Burgesses of the London
Borough of Lambeth

Representative : Homeownership Services

Respondent: Ms D Condon

Representative: In person

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

**Tribunal
members:** Judge Pittaway
Mr M Cairns MCIEH

Date of decision: 18 March 2021

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 an electronic bundles of 145 pages (including the application and applicant's submissions dated 30 October 2020, the Directions issued by the tribunal dated 7 December 2020, the respondents' objection to the application dated 14 January 2021, the applicant's brief reply to the respondent's submissions dated 2 February 2021 and the respondent's undated reply to the applicant's reply.

The tribunal's decision is set out below.

References to sections are to sections in the Landlord and Tenant Act 1985, unless otherwise stated.

DECISION

The Tribunal grants the application for dispensation from statutory consultation in respect of the subject works, namely (a) the replacement of 5 windows at Flat 1 which works were completed around 24 July 2017 and (b) renewing the guttering and downpipes and repairing, filling and painting the front exterior wall and concrete surfaces, which works were completed around 20 January 2018.

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 liability to pay, for a reason other than non-consultation in respect of the subject works, and the reasonableness and/or the cost of the subject works.

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 works to the Property. These are described in the applicant's statement of case as (a) the replacement of 5 windows at Flat 1 at a cost of £4,958.60 (the '**window works**') and (b) renewing the guttering and downpipes and repairing, filling and painting the front exterior wall and concrete surfaces (the '**wall works**') at a cost of £3,006.98 (collectively the '**works**').
2. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if the landlord plans to carry out qualifying works which would result in the contribution of any tenant being more than £250. The respondent's share of the cost of the works is in excess of £250.
3. By directions dated 4 December 2020 (the '**directions**') the tribunal directed that if the respondent objected to the application she should do so by 25 January 2021. The respondent did so on 14 January 2021, with the applicant making a brief reply to that opposition on 2 February 2021 and the respondent making a reply to that, which is undated in the bundle before the tribunal.
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.

The applicant's case

5. The applicant is the freeholder of the property which is described in the application as a terraced house conversion consisting of a one-bedroom ground floor flat ('**Flat 1**') and a two-bedroom first and second floor flat ('**Flat 2**'). The applicant states that the ground floor flat is let on a secure tenancy, the other is held by the respondent on a lease dated 27 September 1999 for a term of 125 years from 27 September 1999. The lease provides for the tenant to pay the landlord a rateable proportion of the costs referred to in clause 3 of the lease which include, at clause 3.5 the exterior walls, the whole of the structure, gutters and rainwater pipes and window frames of the building.
6. In its statement the applicant stated that the works were undertaken by a contractor engaged under a qualifying long term agreement ('**QLTA**') in respect of which consultation had been undertaken. However in relation to both the specific window works and the wall works the applicant did not serve Notice of Intention and/or have regard to any observations of the respondent.

7. The applicant states that the failure to comply with the consultation requirements was not because of any disregard for the requirements or intransigence but because the Council's Area Responsive Repairs Team was unaware that part of the cost of the works was recoverable from the respondent. It says that this is evident from the fact that it did consult with the respondent of works carried out to the windows of Flat 2.
8. The applicant referred the tribunal to paragraph 44 of the decision in *Daejan Investments Ltd v Benson and others* and the need for the tribunal to focus on whether the respondent is being required to pay for unnecessary services or services provided to a defective standard or whether she is being required to pay more for services provided to an acceptable standard than is necessary. In the applicant's submission the works were appropriate given the respondent's repair and maintenance obligations, and were value for money because they were carried out under a QLTA.
9. The applicant further submitted that the respondent had not at any time suggested that she had suffered relevant prejudice through the failure to consult or would suffer relevant prejudice if an unconditional dispensation be granted. The only issue raised being failure to serve Notice of Intention under Schedule 3 of the Service Charge (Consultation Requirements) (England) Regulations 2003.

The respondent's case

10. The respondent objected to the application on the basis that no s20 Notice had been received for the works, and that the cost of the work appears excessive. The respondent queried whether as a leaseholder she was aware of the QLTA.
11. The respondent made submissions as to the quality of the work undertaken to the windows of her Flat 2.
12. The respondent made submissions as to the disparity between the estimates for the works and their actual cost, and as to the timing of the demands for payment.
13. The respondent submitted that she had been prejudiced by reason of the applicant having failed to consult in respect of the works, having been initially told she would not be charged for the works and then being told that the present application was being made to the tribunal.

The applicant's reply

14. In response to the respondent's query in relation to the QLTA the respondent submitted that the QLTA had been entered into in or around 2014, after a tendering

process and borough wide consultation with its leaseholders before entering into the QTLA.

15. The applicant submitted that any issues as to payability or reasonableness of the works should be raised in a separate s27A application to the tribunal.
16. The applicant stated that it had no record of the any agreement that the cost of the window works would not be charged by way of service charge.
17. In response to the respondent querying why the works had not been assessed by more than one surveyor and why the respondent had not been given the opportunity of requesting replacement of her windows at the same time the applicant submits that having been repaired twice the flat 1 windows required replacement. This would not have been altered by the respondent having been given the opportunity to make observations. Insofar as Flat 2 windows were concerned the applicant deemed these repairable and consultation would not have altered that.

Determination and Reasons

18. Having reviewed the submissions of both parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.
19. 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.”
20. The 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 made here. In an application for dispensation the tribunal does not consider liability to pay for the works, nor whether the works have been carried out to a reasonable standard and at a reasonable cost. These are matters for a separate application under s27A.
21. The tribunal determines, having regard to the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 (*‘Daejan’*), the submissions made by the applicant as to consultation having taken place before the QLTA was entered into and the stated need for the works, in particular the need to replace rather than repair the Flat 1 windows, which was not challenged by the respondent, that the respondent

was not prejudiced by the works and it is reasonable to dispense with the consultation requirements.

22. Any issue of the quality of the work undertaken to the windows of Flat 2 is not before the tribunal in this application.

23. Whether the respondent is not liable for the cost of the works by reason of any other statutory provision other than s20ZA, and 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: 18 March 2021

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.