



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

Case Reference: LON/00BK/LDC/2021/0049 P

HMCTS code: P: PAPERREMOTE

Property: 15 Cleveland Square, Bayswater, London
W2 6DG

Applicant: The Estate of the late George Joseph
Galberg

Representative : Salter Rex LLP (Mr S Ingham)

Respondent: The leaseholders listed in the schedule
to the application

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

Tribunal: Judge Pittaway

Date of decision: 21 April 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 in a bundle of 53 pages which included the application dated 18 February 2021, the Directions as amended by the tribunal on 16 March 2021, the documents upon which the applicant relies, contractor quotations and a specimen lease.

The tribunal's decision is set out below.

DECISION

The Tribunal grants the application for dispensation, retrospective if the works have now been undertaken, from statutory consultation in respect of the subject works, namely the replacement of the roof covering to the barrel roof over the incoming electrical head and electrical plant room at lower ground floor level, replacement of the flat roof over the boiler plant room, and damp proofing and making good works in the electrical plant room at lower ground floor level.

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 dispensation from consultation in respect of works to the Property. The works are described in the application as work to the finishes of barrel roof over the covered walkway and electrical plant room at lower ground floor level, work to the finishes of flat roof over the large lightwell at lower ground floor level and damp proofing works in the electrical plant room at lower ground floor level (the 'works').
2. The application describes the works as very urgent as water is currently leaking through both roofs and there is electrical and substantial boiler plant located below them. If these installations are damaged by water ingress the Property is at risk of

not having electricity, heating or hot water, and consequential repair works would significantly increase the costs.

3. The application states that all the lessees have been advised of the works and their cost, and the intention to dispense with section 20 consultation and have agreed to the same.
4. 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 application did not state what each leaseholder's contribution to the cost of the works would be, but from the bundle before the tribunal it is clear that the cost would exceed £250 per flat.
5. By directions dated 1 March 2021, amended 16 March 2021 (the '**directions**') the tribunal directed that the applicant by 24 March 2021 send each leaseholder and any residential sublessees the application and the directions and confirm to the tribunal that this had been done by 24 March. The applicant confirmed on 23 March 2021 that it had emailed the tenants with the application and directions on 18 March 2021 and had displayed the documents in the entrance hall of the Property on 23 March.
6. The directions provided that if any leaseholder/sublessee objected to the application he/she should do so, to the applicant and the tribunal, by 2 April 2021. The tribunal received no objections, and none have been included in the bundle provided to the tribunal by the applicant.
7. 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

8. The applicant is the freeholder of the Property. The Property is described in the application as a Grade 2 listed building constructed over six floors and converted into five apartments.
9. The specimen lease (of Flat A on the ground floor) provided did not appear to include all its pages (there appear to be pages missing between that page numbered Pg 46 and that numbered Pg 47 in the copy lease provided). However the Fourth Schedule of the specimen lease refers to the cost of maintaining the structure and roof in a way which suggests that these costs are recoverable by way of service charge from the tenants.

10. On 25 November 2020 Mr Ingham of Salter Rex LLP e mailed the tenants informing them of the need for works and costing them as follows

Damp proofing electrical plant room (Cedarcare Ltd)	£1590 plus VAT
Five year damp proofing guarantee	£297.20
Making good works in electrical plant room (RMB Chelsea)	£1513 plus VAT
Reroofing barrel and flat roofs (Martin James Roofing Ltd)	£5,450 plus VAT
Suggested contingency	£500 plus VAT
Salter Rex fee	£1000 plus VAT
Total	£12,313

The estimates for these figures were contained in the applicant's bundle.

Responses from the respondents

11. The applicant's bundle contained e mails from tenants agreeing to the works, the cost and the intention to dispense from section 20 consultation. There were no objections. The tribunal did not receive any objection from any leaseholder.

Determination and Reasons

12. 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.”

13. 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.

14. The tribunal determines that the respondents are not prejudiced by the works and it is reasonable to dispense with the consultation requirements.

15. In reaching its decision the tribunal has considered the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 (***Daejan***), and has had regard to the application and the documents provided, in particular

- the evidence of the consultation which the applicant has undertaken with the respondents,
- the e mails from the respondents agreeing to the works

- that no objection has been received from any respondent, and
 - the stated need for the works.
16. Whether or not the respondents are liable for the cost of the works by reason of the terms of their leases, any statutory provision other than section 20ZA, and whether the works are 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 liability to pay and the reasonableness and /or cost of the works.
17. The applicant is reminded that, as stated in the Directions, it is the responsibility of the applicant to serve a copy of this decision on all respondents.

Name: Judge Pittaway Date: 21 April 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.

