FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AY/LDC/2022/0155**
Property	**:**	**1-3 Venn Street, London SW4 0AZ**
Applicant	**:**	**Queensville Properties Ltd**
Respondents	**:**	**Mr G and Mrs C Montes**
Type of Application	**:**	**Dispensation from consultation requirements under Landlord and Tenant Act 1985 section 20ZA**
Tribunal Member	**:**	**Judge Professor R Percival**
Venue	**:**	**Remote paper determination**
Date of Decision	**:**	**8 November 2022**

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 landlord submitted an application for dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act") and the regulations thereunder, dated 24 August 2022.

2. The Tribunal gave directions on 16 September 2022. The directions provided for a form to be distributed to those who pay the service charge to allow them to object to or agree with the applications, and, if objecting, to provide such further material as they sought to rely on. The application and directions was required to be sent to the leaseholders and any sublessees, and to be displayed as a notice in the common parts of the property. The deadline for return of the forms, to the Applicant and the Tribunal, was 10 October 2022.

3. The Applicant confirmed that the relevant documentation had been sent to the leaseholders. The managing agents state that they have not been able to comply with the direction to display a copy of the application, as there are no common parts to the property. The managing agents further state that all of the service charge is in fact paid by the Respondents named above, as they pay the service charge in respect of the ground floor flat, occupied by a "regulated tenant". However, it appears from the terms of their response that they did not notify the sub-lessee in the ground floor flat, as required by the directions.

4. No response from the leaseholders has been received by the Tribunal, and the Applicant confirms that it has had no response from them.

The property and the works

5. The property is described in the application form as a "two unit purpose built house with external steps leading to the ground floor rear garden". Correspondence with the Tribunal reveals that one of the two units is a ground floor flat with the address 3 Venn Street (occupied, it is said, by a regulated tenant). The bundle only contains a deed of variation of the lease of 1 Venn Street, but not the lease varied. It is therefore not compliant in this respect with the directions. However, the deed of variation, dated 2009, gives retrospective consent for a "roof conversion", apparently adds a reference to a second floor to an existing

reference to a first floor, and provides a new lease plan. The lease plan shows a flat or maisonette on the first and second floors. In an attempt to understand the layout in the absence of any reasonable explanation, I have looked at the exterior front elevation of the property on Google Street View, and can see that the building is one of a row of semi-detached buildings, each with two front doors. I therefore assume that, in each case, one front door serves the ground floor flat and the other a first floor flat (and, in the case of 1 -3, a second floor). This is congruent with the numbering scheme in the street.

6. The description of the works in the application is fragmented, rather than being sensible described in a single narrative. I have put together a number of different entries on the application form and the information in a letter from the managing agents which appears to be associated with a series of uncaptioned photographs in order to appreciate the nature of the works. I note that the form of the bundle is not compliant with the directions.

7. It appears that at an unspecified time, a flat roof at the rear of the building was inspected. That revealed that in a number of places, the roof was failing. The timbers under what appears to be a felt roof in poor condition have rotted, with the result that the roof had dipped. Lead flashing between the roof and parapet walls has come lose as a result. There are references to the need to prevent damage caused by water ingress, but it is not clear that water ingress has in fact been reported, or is evident.

8. There is a single quotation, in very short form, to provide a new felt roof, flashings and to modify a chimney. The sum is £10,000. The quotation is dated 5 September 2022.

9. It is not clear whether the application is retrospective or not.

10. There is no express argument that the works are urgent, although the repairs are described as "urgent" at one point in the application form (in relation to track preference). However, I take it that that is an argument I should consider.

11. A form of notice of intention to undertake works was served on the leaseholders on 24 August 2022.

Determination

12. The Tribunal is concerned solely with an application under section 20ZA of the 1985 Act to dispense with the consultation requirements under section 20 of the same Act.

13. The application is poor. In particular, it is difficult to assess whether there was or is an urgent need for the work to be done. The information supplied is inadequate, particularly as to the date on which it became apparent to the Applicant that the works were necessary; and as to what if any consequences have flowed from the state of roof, or any assessment of risk of, for instance, immediate water ingress. As a result, the Applicant has failed to prove urgency.

14. However, no response been received from the only leaseholders who contribute to the service charge (or so it appears). It is therefore clear that the leaseholders have not sought to claim any prejudice as a result of the consultation requirements not having been satisfied. Where that is the case, the Tribunal must, quite apart from any question of urgency, allow the application: *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854.

15. It seems clear that, in disobedience to the directions, the tenant in the ground floor flat has not been notified, and accordingly has been denied the opportunity to make representations. This consideration gives me considerable pause for thought as to whether dispensation should be granted now. On the one hand, I am told that the tenant in number 3 does not contribute themselves to the service charge. On the other, I have been given no information as to the relationship in respect of service charges between the leaseholders and the tenant in number 3, so it cannot categorically be said that there is no possibility at all that he or she would be able to make a case for prejudice. However, on balance I consider, despite the inadequacies of the information before me and the failure of the Applicant to comply with the directions, I should grant dispensation. While not impossible, it is at least very likely that the tenant of number 3 would not make a claim to prejudice. In those circumstances, refusing the application would be a disproportionate step. I could have declined to make a decision and made directions for the original directions to be carried out, but that would result in further delay, with the risk of further costs being charged to the service charge payer.

16. This application relates solely to the granting of dispensation. I note that there is was only a single quotation sought. If the leaseholders consider the cost of the works to be excessive or 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 Landlord and Tenant Act 1985.

Name: Judge Prof Richard Percival **Date:** 8 November 2022

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.