12881

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

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| **Case Reference** | : | **LON/00BE/LDC/2018/0092** |
| **Property** | : | **Grove Court, 55-59 Peckham Grove, London SE15 6HP** |
| **Applicant** | : | **Abacus Land 4 Limited** |
| **Respondent** | : | **The leaseholders listed in the application** |
| **Type of Application** | : | **Dispensation from consultation requirements under Landlord and Tenant Act 1985 section 20ZA** |
| **Tribunal Member** | : | **Judge Professor R Percival** |
| **Venue of Deliberations** | : | **10 Alfred Place, London WC1E 7LR** |
| **Date of Decision** | : | **9 July 2018** |

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**DECISION**

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## Decision 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 applies for a dispensation under section 20ZA from the consultation requirements in section 20 of the 1985 Act and the regulations made thereunder in respect of the renewal of the fixings of soffit boards. The application was allocated to the paper track.

2. The Tribunal gave directions on 22 May 2018, which provided for a form to be distributed to the tenants 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 deadline for return of the forms was 13 June 2018. One tenant, Ms Der Sarkissian, returned a form objecting to dispensation being granted, supported by reasons set out in an email to the Tribunal.

## The property and the works

3. Grove Court consists of two adjacent blocks of flats which share a central courtyard and underground garage, built in about 2008.

4. In February 2018, the managing agent, Residential Management Group Limited, received reports of material from the roof or the soffit boards falling off. A contractor was appointed and scaffolding erected. The contractor reported that there was an issue with loose soffit boards. The managing agent appointed a chartered surveyor who concluded that the soffit board fixings were failing because the fixings were corroded and too small. The surveyor recommended that all the soffit boards required immediate attention, there being a danger that they would fall off and cause serious harm. He produced a schedule of works which involved the erection of scaffolding, the removal of the soffit boards, installation of new fixings and the re-fitting of the soffit boards.

5. The managing agent secured prices for the work from three contractors, and selected the cheapest (£27,800). The selected contractor was not registered for VAT, unlike the two alternatives.

6. The managing agents wrote to the respondent leaseholders in May 2018, advising them that this application was to be made.

7. Work commenced on 19 May 2018, and has now presumably been completed.

8. The applicant submits that the work is urgent, given the danger of serious personal injury if one or more of the soffit boards were to fall onto communal circulation areas. Further, using the scaffolding already erected for the inspection would reduce costs overall.

9. Ms Der Sarkissian's objections were, first, that she and the other leaseholders should have been informed of the dangers between 28 February, when debris fell, and 12 March, when the scaffolding was erected; secondly, that the cheapest quote was only appreciably cheaper because the contractor was not registered for VAT; and finally that there was insufficient information in the "Notice of Intention of 22 June 2016". She closes by saying her opposition is motivated by the lack of communication and the quality of information provided by the managing agents.

10. In response, the applicant states that it proceeded diligently between the two dates mentioned; that the cost of the works is not a matter before the Tribunal and in any event the fact that the contractor is not VAT registered benefits the tenants; and that the notice of intention referred to relates to other matters.

## Determination

11. The application is allowed. It was clearly both appropriate in health and safety terms and economically advantageous to undertake the work as a matter of urgency, and using the same scaffolding as was erected for the inspection.

12. As to Ms Der Sarkissian's objections, I conclude that they do not disclose any possible financial prejudice to her. That being so, and there being no other objections that sought to demonstrate such prejudice, I must allow the application: *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854.

13. This application relates solely to the granting of dispensation from undertaking the consultation process otherwise required by section 20 of the 1985 Act. If the lessees consider the cost of the works to be 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 them to apply to the Tribunal for a determination of those issues under section 27A of the 1985 Act.

**Name:** Judge Professor Percival **Date:** 19 June 2018

## 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.