FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00 AG/LDC/2020/0193**
Property	:	**39 College Crescent, London, NW3 5LB**
Applicant	:	**39 College Crescent Ltd**
Representative	:	**Tant Building Management Ltd**
Respondents	:	**Mr J Mrs V Stern** **Ms I Evans** **Mrs L Zhang** **Mrs S Lowy** **Ms Z Yu** **Mrs J & Mr D Akgul** **The Blue Tree Clinic**
Representative	:	**None**
Type of Application	:	**Dispensation from consultation requirements under section 20ZA Landlord and Tenant Act 1985 ("the Act")**
Tribunal Member	:	**Mr Charles Norman FRICS** **Valuer Chairman**
Date of Decision	:	**10 January 2021**

Determination by Written Representations

DECISION

Decision

1. The application for dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 in respect of the quotation set out in Paragraph 2 below is **GRANTED.**

2. The quotation is as follows:

22 September 2020	Refer It All Ltd	£10,960 + VAT

3. This Decision has no effect in relation to the Coach House lease (see below) as that is a business premises and therefore outside the scope of section 20 of the Landlord and Tenant Act 1985 which only applies to dwellings, and the Tribunal has no jurisdiction in relation to business premises service charges.

Reasons

Background

4. This has been a remote determination on the papers which has not been objected to by the parties. The form of remote hearing was PAPERREMOTE. A face to face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined on paper. The documents that the Tribunal was referred to are in a bundle of 241 pages the contents of which the Tribunal has noted. The Decision made is set out at Paragraphs 1,2 and 3 above.

5. Application to the Tribunal was made on 28 October 2020 for a dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") (set out in the appendix). Unfortunately, the original application was unsigned, and the Tribunal directed a re-application which was received on 14 December 2020.

6. Directions were issued on 3 November 2020. The Directions set the matter down for determination by written representations, unless any party made a request for an oral hearing, which none did. The Directions required the applicant to send each of the leaseholders a copy of the application form and the directions by 13 November 2020, evidence of which was provided to the Tribunal. In addition, the respondents were invited to respond to the application. The Applicant was directed to prepare and serve a digital bundle by 4 December 2020.

7. The Tribunal did not consider that an inspection of the property was necessary.

The Property

8. The property is described as six townhouses plus a coach house arranged around a gated common area courtyard, built in 2015. It is situated in Hampstead.

The Respondents' leases

9. Leases of each of the properties were supplied, by which a term of 999 years were granted by the applicant at peppercorn rents. The leases include provision for recovery of service charge in relation to communal areas. Although the six townhouses are residential, it is clear that by virtue of Para 1 of the Seventh Schedule to the lease of the Coach House that these are business premises.

Jurisdiction

10. Section 18 of the Landlord and Tenant Act 1985 provides as follows:

> Meaning of "service charge" and "relevant costs".
>
> (1)**In the following provisions of this Act** "service charge" means an amount payable by a tenant of a **[dwelling]** as part of or in addition to the rent—
>
> (a)which is payable, directly or indirectly, for services, repairs, maintenance [improvements] or insurance or the landlord's costs of management, and
>
> (b)the whole or part of which varies or may vary according to the relevant costs. (emphasis added)

11. It follows therefore that the lease of the Coach House being business premises falls outside the above definition. The consequence of this is that this Tribunal has no jurisdiction to consider service charge matters relating to the coach house and section 20 consultation is not applicable in relation to the Coach House lease. This decision of the tribunal is therefore binding only upon the six townhouse lessees. The Tribunal raised this point with the parties and received no contrary submissions.

The Applicants' case

12. In summary, the applicants' case is that the coach house is suffering water ingress which has been diagnosed as being due to a faulty membrane. Owing to the onset of winter the applicant wishes to prevent further water ingress and damage to the building.

13. The applicant had prepared a specification of works which was appended to the application. In brief this included taking up paving slabs in the courtyard expose the membrane, re-pointing a wall applying a tanking membrane relaying slabs and refitting a door and doorframe frame.

14. The applicant had informed the lessees via email in relation to these works, supplied a schedule of works, competitive quotes, and a tender analysis. It was clear that the lessees had been engaged in the process as one of the tenderers was at the suggestion of a lessee. The quotations received were £11,035, £44,150 and £10,960. Ultimately it was decided to proceed with the lowest quote.

The Respondents' Case

15. No replies were received from the respondents.

The Law

16. Section 20ZA is set out in the appendix to this decision. The Tribunal has discretion to grant dispensation when it considers it reasonable to do so. In addition, the Supreme Court Judgment in *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 empowers the Tribunal to grant dispensation on terms or subject to conditions.

Findings

17. The Tribunal accepts the submissions of the applicant that the work is required urgently. It also notes that considerable consultation has been undertaken, with a detailed specification circulated, quotations and a tender analysis. The tribunal noted that the quotations excluded VAT.

18. The Tribunal notes that there was no opposition to the application from any of the respondents.

19. The Tribunal therefore determines that the appropriate outcome is to grant dispensation unconditionally. As foreshadowed above, this decision does not apply to the Coach House lessee.

20. This application does not concern the issue of whether any service charge costs will be reasonable or payable. The residential leaseholders will continue to enjoy the protection of section 27A of the Act.

C Norman FRICS
Valuer Chairman

10 January 2021

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

- 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. Where possible any such application should be made by email to London.Rap@Justice.gov.uk.

- 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.

- 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

Section 20ZA Landlord and Tenant Act 1985

(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.

(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.