FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/LDC/2018/0189**
Property	**:**	**84 Cambridge Gardens, London W10 6HS**
Applicant	**:**	**Mr Viran Patel**
Respondents	**:**	**Notting Hill Housing Trust D'Arcy Fenton Luis Castro Simon Mook-Sang Fabio Sebastianelli Nicola Stock**
Type of application	**:**	**Section 20ZA L&T Act 1985 – to dispense with the requirement to consult lessees about major works**
Tribunal members	**:**	**Judge T Cowen Mr S Mason BSc FRICS FCIArb**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of order	**:**	**7 January 2019**

SUBSTANTIVE DECISION

Decision of the tribunal

The tribunal grants unconditional dispensation in respect of the Applicant's proposed works.

REASONS

1. This is an application by the Applicant under section 20ZA of the Landlord and Tenant Act 1985 to dispense with the consultation requirements under

section 20 of that Act. The Applicant is the property manager of the landlord, B&M Trustees Limited.

2. The first thing to say about this application is that it is very poorly presented. The works in question are new works the need for which was noticed while previous works were being done which was the subject of an earlier application to this Tribunal There is no clear statement of what has happened or of the reasons why things have happened in the way they have. The Tribunal has had to piece together the story from clues dotted around the papers. Even a paragraph in the application form describing the sequence of events would have been helpful.

3. The application is in respect of qualifying works ("the New Works") which have already been commenced. It is not clear whether the New Works have been completed, but it is likely that they have. The New Works comprise soil pipe repairs, replacement of damaged copings and repairs to the roof and parapet wall of the Property. The Applicant's case is that further damage would have occurred to the Property if the New Works had not been commenced on an urgent basis, but there is an email in the bundle dated 28 June 2018 which seems to suggest that the need for the New Works was spotted before that date. It is difficult to understand why the section 20 procedure could not have been followed between June 2018 and November 2018 when this application was made.

4. The only issue for the tribunal on the present application is whether it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs are recoverable or payable.

5. The application to the tribunal was received on 15 November 2018 and directions were given this matter on 28 November 2018 directing that the application be decided on paper without a hearing in the week commencing 7 January 2019, unless any party requested a hearing. No party requested a hearing and this therefore is the decision of the Tribunal after considering the matter on paper without a hearing.

The Facts

6. The Property is a converted house comprising 6 flats.

7. We have seen a sample lease for Flat D which shows that there is a requirement by the leaseholders to pay service charges for the cost of the landlord carrying out works in the nature of those which are the subject of the present application. The cost of the New Works therefore appears to be within the meaning of service charges which are the subject of section 20 of the 1985 Act.

8. As stated above, it is the Applicant's case that the need for the works was noticed by contractors while other works were being carried out. It is said

by the Applicant that it was not previously possible to have seen the need for the proposed works because they are at a height not normally visible. The Applicant obtained 2 quotes for the new work and decided to instruct the same contractor who was already carrying out the earlier works. We have seen one of the quotes which is in the sum of £3,501.75 inc VAT. The contractor was instructed on 8 November 2018 to carry out the new proposed works. The earlier works being carried out were pointing repairs which were themselves the subject of a section 20ZA decision of this Tribunal on 17 May 2018 (LON/00AW/LDC/2018/0073).

9. The directions further provided for the application to be sent to all the leaseholders and for any leaseholders who wish to oppose the application to complete and return the reply form with their reasons by 12 December 2018. We have seen a copy of a letter dated 30 November 2018, which the landlord sent to all leaseholders informing them of these proceedings and attaching the application form and the directions. Pursuant to the same directions, the landlord also displayed a copy of the application and its enclosures in the common parts of the Property on 3 December 2018.

10. None of the leaseholders have returned reply forms. We are told by the Applicant in his application form that "five out of six leaseholders are concerned that the property will deteriorate further if the works are not carried out immediately" and that "five out of six leaseholders originally had agreed to proceed with the contractor", but that "One leaseholder was not willing to proceed with the additional works unless we carried out Section 20 works or sought dispensation". We do not know which one of the leaseholders raised this objection. We have not seen any written objection and, as stated, none of the leaseholders has responded or objected to this application.

11. The evidence, as we have said, is highly unsatisfactory.

The Tribunal's Decision

12. Despite this, for the reasons stated below, the Tribunal has decided to dispense with the statutory consultation requirements of section 20 of the 1985 Act in relation to the proposed works. We have considered the possibility of imposing conditions on the dispensation, and we have decided against doing so.

Reasons for the decision

13. We have considered whether it would be reasonable to grant dispensation. The relevant statutory provisions are found in subsection 20ZA (1) of the 1985 Act under heading "Consultation Requirements: Supplementary". That subsection reads as follows: *"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 it is reasonable to dispense with the requirements".

14. In the light of the decision of the Supreme Court in *Daejan Investments v Benson* [2013] UKSC 14, and given that this is a retrospective application for dispensation, we must consider primarily whether dispensation would cause prejudice to the leaseholders. The burden of identifying relevant prejudice falls on the leaseholders who are seeking to resist the application. In this case, none of the leaseholders are actively seeking to resist the application. *Daejan* also made it clear that the purpose of the statutory consultation requirements was to ensure that the leaseholders were protected from paying for inappropriate works or paying more than was appropriate.

15. There is no evidence of any such risk in this case. Nor is there any evidence of prejudice. The New Works seem on their face to have been appropriate. We have no reason to doubt that they were appropriate and necessary at the time, from the material in front of us, and there is no-one who actively challenges the Applicant's application. It is also clear that the New Works needed to be carried out as soon as possible in the circumstances, despite the fact that there seems to have been a substantial delay between noticing the need for the New Works and commencing the New Works.

16. We further note that the leaseholders did not appear to have served any adverse observations. In the circumstances, we are satisfied that the leaseholders would not be prejudiced by the dispensation requested.

17. The leaseholders will of course enjoy the protection of section 27A of the 1985 Act so that if they consider the costs of the works to be unreasonable or unpayable for any other reason, then they may make an application to the tribunal for a determination of their liability to pay the resultant service charge or such other application to such other court or tribunal as they may be advised.

18. For all of the above reasons we conclude that it is appropriate to exercise the discretion conferred by section 20ZA of the 1985 Act by dispensing with the consultation requirements in relation to the proposed works.

19. There were no applications for costs before the tribunal.

20. For all the above reasons, the Tribunal made the order set out above.

Name: Judge T Cowen
Mr S Mason BSc FRICS FCIArb **Date:** 7 January 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).