FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/OOAB/LDC/2018/0197**
Property	**:**	**2-18 Whalebone Lane South, Becontree Dagenham RM8 1HB**
Applicant	**:**	**Proposed Company Limited**
Representatives	**:**	**Warwick Estates**
Respondents	**:**	**The leaseholders of 2-18 Whalebone Lane South Becontree Dagenham**
Objecting tenant	**:**	**-**
Type of Application	**:**	**Application for the dispensation of consultation requirements pursuant to S. 20ZA of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge Professor Robert M Abbey**
Venue of Paper Based Hearing	**:**	**10 Alfred Place, LondonWC1E 7LR**
Date of Decision	**:**	**26 February 2019**

DECISION

Decisions of the Tribunal

(1) The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and tenant Act 1985 (Section 20ZA of the same Act).

(2) The reasons for our decisions are set out below.

The background to the application

1. The property is a mixed use development consisting of 7 commercial units and 4 residential flats. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act, (see the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987), Schedule 4.) The request for dispensation concerns roofing works required to prevent further water ingress to the property. The works include remedial and reinstatement works for a flat roof gulley felting and asphalt repairs and are in the main required to address water damage and the necessary repairs required to water damaged parts of the property.

2. Section20ZA relates to consultation requirements and provides as follows:

> *"(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.*
> *....*
> *(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.

3. At the time of a hearing for Directions on 10th December 2018Judge Bowers required tenants who opposed the application to make their objections known on the reply form produced with the Directions. No objections were received by the Tribunal. Indeed, in the application the applicant stated that the lessees had not sent any correspondence to the applicant regarding these works..

4. In essence, the works mentioned above are required to prevent further water damage to all four flats. The works include remedial and reinstatement building works for all four flats and are in the main required to address long standing water damage and the necessary repairs required to parts of the properties damaged by the ingress of water.

The decision

5. By Directions of the tribunal dated 10th December 2018 it was decided that the application be determined without a hearing.

6. The tribunal had before it a small bundle of documents prepared by the applicant that contained the application, grounds for making the application, copy correspondence, a specimen copy lease and copy Tribunal Directions.

The issues

7. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether or not service charges will be reasonable or payable.

8. Having read the evidence and submissions from the Applicant and having considered all of the copy deeds documents and grounds for making the application provided by the applicant, the Tribunal determines the dispensation issues as follows.

9. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a

leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.

10. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by such an application as is this one before the Tribunal. Essentially the Tribunal have to be satisfied that it is reasonable to do so.

11. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14 by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.

12. The Supreme Court came to the following conclusions:

    a. The correct legal test on an application to the Tribunal for dispensation is:

       "Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord's failure to comply with the requirements?"

    b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.

    c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord's failure to comply.

    d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.

    e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

    f. The onus is on the leaseholders to establish:

        i. what steps they would have taken had the breach not happened and

        ii. in what way their rights under (b) above have been prejudiced as a consequence.

13. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the

lessor/applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above. It should also be remembered that no leaseholder has indicated that they actually oppose the application.

14. The tribunal is of the view that it could not find prejudice to any of the tenants of the properties by the water ingress and damage remediation works carried out or to be carried out by the applicant. The applicant believes that the water ingress and damage remediation works that are required are vital given the nature of the problems reported to the agents acting for the applicant. The applicant also says that in effect the tenants of the properties have not suffered any prejudice by the failure to consult. On the evidence before it the Tribunal agrees with this conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application.

15. Rights of appeal made available to parties to this dispute are set out in an Annex to this decision.

Name: Judge Professor Robert M. Abbey **Date:** 26 February 2019

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.