



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

Case reference : **LON/00BK/LDC/2021/0175**

Property : **55 Park Lane , London, W1K 1NA**

Applicant : **Prestige Properties SA**

Representative : **Mayfair Property Management Ltd.**

Respondent : **(1) Andrew Spalton
(Director 55 Park Lane
Ltd)
(2) All leaseholders of the
105 flats at the property.**

Representative : **No participant**

Type of application : **Application for dispensation from
consultation requirements s20ZA
Landlord and Tenant Act 1985**

Tribunal member(s) : **Mr Richard Waterhouse MA LLM
FRICS**

**Date and venue of
hearing** : **29th September 2021 Remote
Hearing on Papers**

Date of decision : **29th September 2021**

DECISION

Determination

1. The tribunal grants dispensation from the consultation requirements of section 20 Landlord and Tenant Act 1985 in respect of the “overhaul and replacement of the communications equipment within the principle comms room, for the building and include decoration”.
2. In granting dispensation in respect of the works, the tribunal makes no determination as to whether any service charge costs are reasonable or payable.

The Application

3. The applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for dispensation from the requirements in section 20 of the Act to consult in advance of qualifying works.

Directions

4. The applicant made the application which is dated 2nd August 2021 and received on the 9th July 2021. Directions were given on 30th July 2021, including for the applicant to notify leaseholders by post and by displaying a copy in communal areas of the application and the directions. The applicant confirmed to the tribunal by letter dated 8th September 2021 it had done so, and no responses had been received.
5. Leaseholders had until 27th August 2021 to file with the tribunal a notice of opposition. No leaseholders have responded and therefore the bundle of documents provided by the applicant is the material on which this determination is based.
6. The tribunal directed that the determination be made on paper unless either party requested a hearing. No such request has been made.

The Facts

7. The property contains 105 apartments over nine floors from and including the first floor, there is commercial use on the ground floor.
8. The applicant seeks urgent dispensation on grounds of the safety of the occupants. The landlord applicant has applied for dispensation from the statutory consultation requirements in respect of upgrading works to the Frame Room at the property. The Frame Room houses the IT and AV systems at the property, which themselves require upgrading, and which in turn necessitates the subject works. These had not previously

been anticipated. The works have been commissioned already, on the basis that they are urgent, in that in their absence, and in the event of an emergency within the building, the communications systems within the property would be inadequate.

The Law

9. Section 20ZA of the Act states that the tribunal may determine that there should be dispensation from the consultation requirements set out in section 20 of the Act in respect of any qualifying works or qualifying long term agreement when “it is satisfied it is reasonable to do so”.
10. In *Daejan Investments Ltd v Benson* [2013] UKSC 14, the Supreme Court set out following factors to be taken into account:
 - a) The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord’s breach of the consultation requirements.
 - b) The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
 - c) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - d) The tribunal has power to grant a dispensation as it thinks fit, including on terms, provided that any terms are appropriate.
 - e) The tribunal has power to impose a condition that the landlord pays the tenant’s reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlords application under 20ZA (1)
 - f) The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some “relevant” prejudice that they would or might have suffered is on the tenants.
 - g) The court considered that “relevant” prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
 - h) The more serious and/or deliberate the landlord’s failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
 - i) Once the tenants had shown a credible case for prejudice, the tribunal should look to the landlord to rebut it.

The Decision

11. No leaseholder has objected or made any other representations in this case. Therefore, there is no assertion of prejudice.
12. In the circumstances I consider it reasonable, in the light of the facts , to dispense with the section 20 Notice requirements.
13. Accordingly, I grant dispensation pursuant to section 20ZA for the works in para 8 above.
14. In granting dispensation, I make no determination of whether any service charge costs are reasonable or payable.

Name: Tribunal Judge Waterhouse **Date:** 29th September 2021

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).

