FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AM/LDC/2021/0144**
Property	**:**	**The Spectrum Building, East Road, Hoxton, London N1 6FB**
Applicant	**:**	**Ixia (East Road) Management Company Limited**
Representative	**:**	**In Person**
Respondent	**:**	**Multiple leaseholders as identified in the schedule accompanying the application**
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	**:**	**6th July 2021 Remote Hearing on Papers**
Date of decision	**:**	**6th July 2021**

DECISION

Determination

1. The tribunal grants dispensation from the consultation requirements of section 20 Landlord and Tenant Act 1985 in respect of the replacement of the external wall system.

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 issued the application on 27th May 2021. Directions were given on 2nd June 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 within the statement of case dated 27th May 2021 it had done so, and no responses had been received.

5. Leaseholders had until 18th June 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 is a nine-storey building comprising two adjoining blocks, with 46 residential apartments and two commercial units. The ground floor provides access to the apartments and is also commercial units on the first floor. The residential apartments are on all storeys above the ground floor. The height of the topmost storey is 27m. A carpark is also present at the rear of the building.

8. The applicant seeks urgent dispensation on grounds of the safety of the occupants. Following investigatory work, it had been discovered that the construction comprises combustible materials and poses a risk of fire spread.

9. Remediation measures are required in order to achieve compliance. Namely, the replacement of parts of the external wall system. The application is in pursuance of these works. Replacement of the external wall system with one that will achieve class A2-s2, d2 or better to demonstrate that the wall cladding/cladding system meets MHCLG s advice or achieves BR135.

The Law

10. 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".

11. 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

12. No leaseholder has objected or made any other representations in this case. Therefore, there is no assertion of prejudice.

13. In the circumstances I consider it reasonable, in the light of the facts , to dispense with the section 20 Notice requirements.

14. Accordingly, I grant dispensation pursuant to section 20ZA for the works in para 9 above.

15. In granting dispensation, I make no determination of whether any service charge costs are reasonable or payable.

Name: Tribunal Judge Waterhouse **Date: 6th July 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).

THE LEGISLATION

Housing Act 1988

s.13.— Increases of rent under assured periodic tenancies.

(1) This section applies to—

(a) a statutory periodic tenancy other than one which, by virtue of paragraph 11 or paragraph 12 in Part I of Schedule 1 to this Act, cannot for the time being be an assured tenancy; and

(b) any other periodic tenancy which is an assured tenancy, other than one in relation to which there is a provision, for the time being binding on the tenant, under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period.

(2) For the purpose of securing an increase in the rent under a tenancy to which this section applies, the landlord may serve on the tenant a notice in the prescribed form proposing a new rent to take effect at the beginning of a new period of the tenancy specified in the notice, being a period beginning not earlier than—

(a) the minimum period after the date of the service of the notice; and

(b) except in the case of a statutory periodic [tenancy—]

[

(i) in the case of an assured agricultural occupancy, the first anniversary of the date on which the first period of the tenancy began;

(ii) in any other case, on the date that falls 52 weeks after the date on which the first period of the tenancy began; and

]

(c) if the rent under the tenancy has previously been increased by virtue of a notice under this subsection or a determination under section 14[below—]

[

(i) in the case of an assured agricultural occupancy, the first anniversary of the date on which the increased rent took effect;

(ii) in any other case, the appropriate date.

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(3) The minimum period referred to in subsection (2) above is—

(a) in the case of a yearly tenancy, six months;

(b) in the case of a tenancy where the period is less than a month, one month; and

(c) in any other case, a period equal to the period of the tenancy.

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(3A) The appropriate date referred to in subsection (2)(c)(ii) above is—

(a) in a case to which subsection (3B) below applies, the date that falls 53 weeks after the date on which the increased rent took effect;

(b) in any other case, the date that falls 52 weeks after the date on which the increased rent took effect.

(3B) This subsection applies where—

(a) the rent under the tenancy has been increased by virtue of a notice under this section or a determination under section 14 below on at least one occasion after the coming into force of the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003; and

(b) the fifty-third week after the date on which the last such increase took effect begins more than six days before the anniversary of the date on which the first such increase took effect.
]
(4) Where a notice is served under subsection (2) above, a new rent specified in the notice shall take effect as mentioned in the notice unless, before the beginning of the new period specified in the notice,—
(a) the tenant by an application in the prescribed form refers the notice to [the appropriate tribunal] ; or
(b) the landlord and the tenant agree on a variation of the rent which is different from that proposed in the notice or agree that the rent should not be varied.
(5) Nothing in this section (or in section 14 below) affects the right of the landlord and the tenant under an assured tenancy to vary by agreement any term of the tenancy (including a term relating to rent).

s.14.— Determination of rent by [tribunal] .

(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to [the appropriate tribunal] a notice under subsection (2) of that section, the [appropriate tribunal][3] shall determine the rent at which, subject to subsections (2) and (4) below, the [appropriate tribunal][3] consider that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy—
(a) which is a periodic tenancy having the same periods as those of the tenancy to which the notice relates;
(b) which begins at the beginning of the new period specified in the notice;
(c) the terms of which (other than relating to the amount of the rent) are the same as those of the tenancy to which the notice relates; and
(d) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.
(2) In making a determination under this section, there shall be disregarded—
(a) any effect on the rent attributable to the granting of a tenancy to a sitting tenant;
(b) any increase in the value of the dwelling-house attributable to a relevant improvement carried out by a person who at the time it was carried out was the tenant, if the improvement—
(i) was carried out otherwise than in pursuance of an obligation to his immediate landlord, or
(ii) was carried out pursuant to an obligation to his immediate landlord being an obligation which did not relate to the specific improvement concerned but arose by reference to consent given to the carrying out of that improvement; and
(c) any reduction in the value of the dwelling-house attributable to a failure by the tenant to comply with any terms of the tenancy.
(3) For the purposes of subsection (2)(b) above, in relation to a notice which is referred by a tenant as mentioned in subsection (1) above, an improvement is a relevant improvement if either it was carried out during the tenancy to which the notice relates or the following conditions are satisfied, namely—
(a) that it was carried out not more than twenty-one years before the date of service of the notice; and

(b) that, at all times during the period beginning when the improvement was carried out and ending on the date of service of the notice, the dwelling-house has been let under an assured tenancy; and
(c) that, on the coming to an end of an assured tenancy at any time during that period, the tenant (or, in the case of joint tenants, at least one of them) did not quit.
[
(3A) In making a determination under this section in any case where under Part I of the Local Government Finance Act 1992 the landlord or a superior landlord is
liable to pay council tax in respect of a hereditament ("the relevant hereditament") of which the dwelling-house forms part, the [appropriate tribunal] shall have regard to the amount of council tax which, as at the date on which the notice under section 13(2) above was served, was set by the billing authority—
(a) for the financial year in which that notice was served, and
(b) for the category of dwellings within which the relevant hereditament fell on that date,
but any discount or other reduction affecting the amount of council tax payable shall be disregarded.
(3B) In subsection (3A) above—
(a) *"hereditament"* means a dwelling within the meaning of Part I of the Local Government Finance Act 1992,
(b) *"billing authority"* has the same meaning as in that Part of that Act, and
(c) *"category of dwellings"* has the same meaning as in section 30(1) and (2) of that Act.
(4) In this section *"rent"* does not include any service charge, within the meaning of section 18 of the Landlord and Tenant Act 1985 , but, subject to that, includes any sums payable by the tenant to the landlord on account of the use of furniture [, in respect of council tax] or for any of the matters referred to in subsection (1)(a) of that section, whether or not those sums are separate from the sums payable for the occupation of the dwelling-house concerned or are payable under separate agreements.
(5) Where any rates in respect of the dwelling-house concerned are borne by the landlord or a superior landlord, the [appropriate tribunal] shall make their determination under this section as if the rates were not so borne.
(6) In any case where—
(a) [the appropriate tribunal] have before them at the same time the reference of a notice under section 6(2) above relating to a tenancy (in this subsection referred to as "the section 6 reference") and the reference of a notice under section 13(2) above relating to the same tenancy (in this subsection referred to as "the section 13 reference"), and
(b) the date specified in the notice under section 6(2) above is not later than the first day of the new period specified in the notice under section 13(2) above, and
(c) the [appropriate tribunal][9] propose to hear the two references together,
the [appropriate tribunal] shall make a determination in relation to the section 6 reference before making their determination in relation to the section 13 reference and, accordingly, in such a case the reference in subsection (1)(c) above to the terms of the tenancy to which the notice relates shall be construed

as a reference to those terms as varied by virtue of the determination made in relation to the section 6 reference.
(7) Where a notice under section 13(2) above has been referred to [the appropriate tribunal] , then, unless the landlord and the tenant otherwise agree, the rent determined by [the appropriate tribunal] (subject, in a case where subsection (5) above applies, to the addition of the appropriate amount in respect of rates) shall be the rent under the tenancy with effect from the beginning of the new period specified in the notice or, if it appears to [the appropriate tribunal] that that would cause undue hardship to the tenant, that that would cause undue hardship to the tenant, with effect from such later date (not being later than the date the rent is determined) as the committee may direct.
(8) Nothing in this section requires [the appropriate tribunal] to continue with their determination of a rent for a dwelling-house if the landlord and tenant give notice in writing that they no longer require such a determination or if the tenancy has come to an end.
(9) This section shall apply in relation to an assured shorthold tenancy as if in subsection (1) the reference to an assured tenancy were a reference to an assured shorthold tenancy.