



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

Case Reference : **LON/00AY/LDC/2022/0142**

Property : **1-56 Aston House, Wandsworth Road, London SW8 4ER**

Applicant : **London Borough of Lambeth**

Respondents : **Leaseholders of the property (list attached to application)**

Type of Application : **Dispensation from consultation requirements under Landlord and Tenant Act 1985 section 20ZA**

Tribunal Member : **Judge Professor R Percival**

Venue : **Remote paper determination**

Date of Decision : **8 November 2022**

DECISION

Decisions of the tribunal

- (1) The Tribunal, pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”), grants dispensation from the consultation requirements in respect of the works the subject of the application.

Procedural

1. The landlord submitted an application for retrospective dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 (“the 1985 Act”) and the regulations thereunder, dated 22 July 2022.
2. The Tribunal gave directions on 16 September 2022. The directions provided for a form to be distributed to those who pay the service charge to allow them to object to or agree with the applications, and, if objecting, to provide such further material as they sought to rely on. The application and directions was required to be sent to the leaseholders and any sublessees, and to be displayed as a notice in the common parts of the property. The deadline for return of the forms, to the Applicant and the Tribunal, was 10 October 2022.
3. The Applicant confirmed that the relevant documentation had been sent, and posted as notices, as required by the directions.
4. No response from a leaseholder objecting to dispensation has been received by the Tribunal.

The property and the works

5. The property is a purpose built block of 56 flats. Seventeen of the flats are held on long leaseholds.
6. The works arise from two water main leaks close to Aston House, the costs of which are referable to the estate service charges payable by the leaseholders.
7. The first leak was notified to the Applicant by a contractor to Thames Water on 17 May 2022. The leak, in (the contractor said) a private main owned by the Applicant, was thought to be immediately outside the rear of Aston House. The leak was of over 55,000 litres of water a day. The Applicants qualifying long term contractor T Brown Ltd were instructed, and provided an initial quotation (£8,592) for the works that would, when charged, not have exceeded the limit above which the consultation requirements come into play. However, once on site, difficulties were encountered finding the leak, and eventually a further

estimate of £28,215 was provided by T Brown, which exceeds the threshold. The works were approved, following consideration within the Applicant on an emergency basis, on 1 July, and were carried out on 7 and 8 July 2022.

8. Subsequently, on 8 June 2022, a further leak, of a similar scale, was identified by Thames Water's contractor, rather further away from the rear of Aston House. Thames Water's contractor again identified the pipe as being privately owned. The quotation for this work was £11,721, which falls below the consultation threshold. However, the Applicant's submission is that (a) the eventual costs may exceed the threshold, in the light of the experience with the first leak; and (b) that the works to remedy both leaks should be considered as part of a single body of works for the purposes of the consultation requirements, and thus for the purposes of this dispensation application. The works on this leak, again on an emergency basis, were approved on 15 July, and were due to start shortly after the application was made.
9. The Applicant wrote to leaseholders on 6 July 2022 to inform them of the works and this application. The letter included an estimate of the charge that would be made to the leaseholder (I assume, on the basis of the then existing quotation as far as the second leak is concerned). The letter was accompanied by a helpful FAQ sheet explaining the context.

Determination

10. The Tribunal is concerned solely with an application under section 20ZA of the 1985 Act to dispense with the consultation requirements under section 20 of the same Act.
11. The Applicant submits that both matters should be considered a single set of works for the purposes of the consultation requirements, that both were urgent, and that it therefore could not comply with the consultation requirements; and that in any event the leaseholders would not be prejudiced by unconditional dispensation, citing *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854.
12. I accept the Applicant's submissions, and the application is allowed.
13. First, although the two leaks were notified at slightly different times and are in different locations, both relate to the water supply to Aston House, and there is a close temporal link between them. Certainly, if no dispensation application were to be made, I would have expected a consultation process to have dealt with both at the same time – the alternative would have been obviously inconvenient and inappropriate. They should be considered as a single body of works, and this dispensation application applies to them as such.

14. Secondly, although the Applicant's submissions as to urgency were limited, I am prepared to accept that, on the face of it, the rectification of leaks of these magnitudes at least raises an issue as to urgency. It is, however, unfortunate that the otherwise clear and full application does not expressly present a strong argument for urgency (in contrast to a similar recent application in relation to a leak at Darley House).
15. Finally, no responses have been received from any of the leaseholders. It is therefore clear that no leaseholder has sought to claim any prejudice as a result of the consultation requirements not having been satisfied. Where that is the case, the Tribunal must, quite apart from any question of urgency, allow the application.
16. This application relates solely to the granting of dispensation. If the leaseholders consider the cost of the works to be excessive or the quality of the workmanship poor, or if costs sought to be recovered through the service charge are otherwise not reasonably incurred, then it is open to them to apply to the Tribunal for a determination of those issues under section 27A of the Landlord and Tenant Act 1985.

Name: Judge Prof Richard Percival **Date:** 8 November 2022

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20ZA

- (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.
- (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.