



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

Case Reference : **LON/00AY/LDC/2022/0182**

Property : **1-12 Laburnam Court, Leigham
Court Road, London SW16 3RE**

Applicant : **The Mayor and Burgesses of the
London Borough of Lambeth
(ref HOS/LIT/PBYF/626541)**

Respondents : **The leaseholders on the list
appended to the 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 : **23 January 2023**

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 24 August 2022.
2. The Tribunal gave directions on 5 December 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 3 January 2023.
3. The Applicant confirmed that the relevant documentation had been sent to the leaseholders and displayed in accordance with the directions.
4. No response from the leaseholders has been received by the Tribunal.

The property and the works

5. The property is a block of 12 one and two bedroomed flats. Five of the flats are held on long leaseholds.
6. On 24 April 2022, the Applicant was alerted by its qualifying long term contractor, OCO Ltd, of complaints by residents of the property of a total loss of mains water. On investigation, it transpired that the London Fire Brigade had cut off the water supply because of what appears to have been a dangerous leak from a mains pipe into the electrical intake cupboard serving the property.
7. Initially, a temporary repair was affected by means of a replacement water mains pipe, at surface level. However, this proved unsustainable within a day, as this pipe had been subject to interference from, the statement of case suggests, a member or members of the public. As a result, the Applicant instructed OCO Ltd to effect a permanent repair

forthwith. A “justification report” was produced, dated 26 May 2022, but it appears that the repair had already been undertaken at that date.

8. OCO Ltd quoted £6,262.75 for the work. There is no suggestion that the outturn figure was different.
9. The Applicant wrote to the leaseholders in advance of making the application, telling them they intended to do so, and including in the letter the estimated figure for each leaseholder’s service charge referable to the works. The letter was accompanied by a helpful FAQ.

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 consultation provisions the Applicant asks to be dispensed with are those in Services Charges (Consultation Etc)(England) Regulations 2003, regulation 7(1) and schedule 3, that is, those applicable where a qualifying long term agreement is in place.
12. I accept that there was a significant degree of urgency. The Applicant tried, appropriately, a temporary fix, which might have allowed sufficient time for the consultation to have taken place. The Applicant was, equally, clearly justified in moving immediately to undertake the permanent repair when the temporary measure proved unsustainable. There has also been reasonable and helpful communication with the leaseholders. The state of urgency itself justifies dispensation.
13. Further, no responses objecting to the dispensation have been received from the leaseholders (or sub-lessees). It is therefore clear that the leaseholders have not 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: *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854.
14. 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.

Rights of appeal

15. 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 London regional office.
16. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
17. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
18. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Judge Prof Richard Percival **Date:** 23 January 2023

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.