



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

**Case reference** : **LON/00BG/LDC/2022/0179**

**Applicant** : **Freehold Managers (Nominees) Ltd**

**Representative** : **Rendall and Rittner Ltd, Managing Agent**

**Respondents** : **Long Residential Leaseholders in St John's Court, 12 Scandrett Street, Wapping, London, E1W 2UP**

**Representative** : **N/A**

**Type of application** : **For dispensation under section 20ZA of the Landlord & Tenant Act 1985**

**Tribunal member** : **Tribunal Judge I Mohabir  
Mr J Naylor FRICS**

**Date of decision** : **20 March 2023**

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**DECISION**

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## **Introduction**

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) for *prospective* dispensation with the consultation requirements in respect of its intention to the proposed remedial work for the gas riser pipes at St John’s Court, 12 Scandrett Street, Wapping, London, E1W 2UP (“the property”).
2. The property is described as being comprised of modern purpose built conversion apartments, built circa 1988. The building has 14 flats and divided into four sections. It is a 4 storey building.
3. The Applicant is the freeholder and landlord. The Respondents are the long leaseholders of the flats in the property. The current managing agent appointed by the Applicant is Rendall and Rittner (“Rendall”).
4. In or about January 2022, Rendall commissioned a fire Risk Assessment of the building from Worksafe Solutions. Amongst the findings in its report dated 14 January 2022 Worksafe Solutions concluded that the following posed a significant fire hazard:

*“There is a riser shaft off the main fire escape stairs, which is used for water pipes, main gas supply pipes to individual flats. There are contraventions additional to the Regulatory Reform Fire Safety Order that include the Building Act, Health and Safety at Work etc Act and more specifically the Gas Safety, Installation and Use Regulations 1998. Gas pipes in risers in accordance with Approved Document B (ADB) Fire Safety (4) a pipe carrying flammable gas through a protected area must be of screwed steel or of all welded steel construction, these pipes are copper with soldered joints and very vulnerable to failing in a fire. Copper pipes with soldered joints may be routed through or in that protected area, provided that it is encased within its own duct/shaft of a similar fire rating for the protected area. In this instance the riser volume is too large, and the riser is shared therefore not permitted, inappropriate and there is no fire resistance separation. Sharing with other services on the upper floor introduces a potential ignition source should gas escape. Riser shaft containing gas pipes must be ventilated at the top and bottom to disperse or dilute any gas that may escape to reduce the risk of fire and explosion. Ventilation must be to fresh air on the outside. As there are multiple complicated issues. A full review of the gas supply to the building needs to be undertaken by a competent and qualified gas engineer to deal with the gas supply issues and include solutions that do not to clash with also meet the needs of the Regulatory Reform Fire Safety Order for the building for fire safety. Gas pipes should be labelled and clearly identifiable.”*

5. Following this, Rendall commissioned a gas pipework replacement feasibility report from BMCG Ltd dated 29 June 2022. The report made the following recommendations to bring the gas installation up to current standards and regulations:

- It would be recommended for an M&E Consultant to specify, tender and supervise the remediation works required to ensure the installation meets all statutory regulations and requirements.
  - The 14 properties should have current gas safety certificates in place and these should then be serviced annually moving forward.
  - The pipework in the riser is removed and replaced back in a compliant material and jointing method as per GSUIR requirements.
  - The riser ducts are fire protected and sealed between the floors.
  - Once the fire sealing has taken place ventilation grilles are installed in the riser cupboards in the event of a gas escape.
  - All pipework is labelled and identifiable.
  - A section of floor in the gas meter room is lifted and the pipework below inspected to check its integrity due to visual signs of bad corrosion. Any loss of integrity will eventually lead to gas leaks. The current pipework will need to be replaced in the appropriate material and protected as per regulations.
  - Ventilation installed in the door of the gas meter room and the appropriate signage installed.
  - Line diagrams are installed in the meter room to show the existing pipework runs.
6. Subject to the availability of sufficient reserve funds, the intention was to carry out the remedial works in or about December 2022 or January 2023. The estimated cost of the proposed works is £24,900. The Tribunal was not informed about whether this had in fact been done. Therefore, we proceed on the basis that it is still proposed.
- 7.. By an application dated 22 September 2022, the Applicant made this application for prospective dispensation.
8. On 3 February 2023 the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way.
9. None of the Respondents have objected to the application. It seems that the only response was from the lessee of Flat 4 who simply wanted better information about the proposed works.

### ***Relevant Law***

10. This is set out in the Appendix annexed hereto.

### ***Decision***

11. The Tribunal's determination took place on 20 March 2023 and was based solely on the documentary evidence filed by the Applicant. NO evidence had been filed and served by any of the Respondents.
12. As a matter of law, a landlord may ask for a dispensation in advance: see ***Daejan Investments Ltd v Benson*** [2013] UKSC 14; [2013] 1

W.L.R. 854 per Lord Neuberger at [56]. The decision in **Daejan** was in respect of an application for *retrospective* dispensation following a failure to consult on qualifying works. Much of the analysis simply does not apply to a *prospective* application to dispense with the consultation requirements in relation to the proposed remedial works, as is the case here.

13. In the Tribunal's judgement, the correct statutory test to apply was whether is it reasonable to dispense with the consultation requirements in relation to the proposed remedial works recommended in the BMCG report.
14. The Tribunal was satisfied that the test was met the following reasons:
  - (a) the two reports obtained by the Applicant provided compelling evidence about the potential fire risk posed to the occupants in the property by the defective gas pipework installation and the need to have the remedial works carried out sooner rather than later.
  - (b) the Respondents have been served with the application and the evidence in support and there has been no objection from any of them.
  - (c) importantly, not to grant the application would almost certainly be unreasonable because it would potentially place the occupiers in the position of being exposed to a significant fire risk if the proposed works are delayed by the need to carry out statutory consultation further. In the event that the remedial works have not been carried out as yet, the Tribunal was mindful that a delay of approximately 14 months has occurred since the fire risk was first identified.
15. It should be noted that in granting the application, the Tribunal makes no finding that the scope and estimated cost of the repairs are reasonable.

**Name:** Tribunal Judge I  
Mohabir

**Date:** 20 March 2023

### **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).

## **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.