FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LDC/2023/0020**
Property	**:**	**Pavilion Apartments and Car Parking Space, 34 St Johns Wood Road London NW8 7HB**
Applicants	**:**	**The Pavilions Limited**
Representative	**:**	**None**
Respondent	**:**	**The leaseholders of the Property**
Representative	**:**	**None**
Type of application	**:**	**Application for dispensation under s20ZA of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge H. Lumby** **Mr D. Jagger MRICS**
Venue	**:**	**Paper determination**
Date of decision	**:**	**17 April 2023**

DECISION

Decisions of the tribunal

The tribunal determines pursuant to s20ZA of the Landlord and Tenant Act 1985 (the Act) that it is not reasonable that dispensation should be granted from the remaining consultation provisions as required under s20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations) and therefore the Applicant's application is dismissed for the reasons set out below.

Background

1. This is an application under section 20ZA of the Landlord and Tenant Act 1985 (the Act) by the management company, The Pavilions Limited in respect of the Pavilion Apartments and Car Parking Space, 34 St Johns Wood Road London NW8 7HB (the Property) for dispensation from the requirements under s20 of the Act and the Regulations. The application is dated 18 January 2023.

2. We have been supplied with a bundle running to 76 pages, which includes the application, the Tribunal's directions in relation to the application, a signed quotation from UK Power Networks (UKPN), correspondence with leaseholders in relation to the application and a specimen lease for the Property. The application refers to a Notice of Intention and a list of leaseholders, both of which were stated to be attached to the application. However, neither were in the bundle. In addition, the original letter to the leaseholders explaining the application was not provided to the Tribunal, the correspondence simply shows two issues raised by leaseholders and the response to them on behalf of the Applicant. We have noted the contents and taken them into account when reaching our decision.

3. The Property is stated in the application to be a 120 unit purpose built building constructed around 1990. The building has a car park and the specimen lease indicates that leases were granted together with a car parking space.

4. The application states that an application had been made to UKPN to increase the electrical supply to the Property's car park, in order to facilitate the installation of electric vehicle charging points. A quotation was obtained for the works from UKPN; this provided a price of £23,962.62 (including VAT) for both "contestable" and "non-contestable" works or £13,015.86 (including VAT) for only "non-contestable" works. The applicant states that a second quotation cannot be obtained for the works as only UKPN can carry out the works. It does however not explain the distinction between "contestable" and "non-contestable" works in this context. It should be noted that the costs of the works are not a matter for this application, which relates only to the dispensation element.

5. It is also stated in the application that a Notice of Intention pursuant to section 20 of the Act was issued. However, as referred to above, a copy was not provided in the bundle and so we were not able to verify its contents or whether it was sent to all leaseholders.

6. Directions were issued on 24th February 2023 indicating that, in the absence of any disagreement, the application would proceed as a paper determination. We have seen an email dated 16th March 2023 from Patricia Barham of D&GBM confirming that the application and directions had been emailed out and displayed on site at reception.

7. The bundle provided contains two queries raised in relation to the application, it is assumed that these are both from leaseholders. The first, from Hiral Shah, was sent at 11.41 on 16th March 2023 and questions whether it is unfair to tenants who do not have cars, and so do not require this upgrade, to bear the cost of the works. A reply was sent by Patricia Barham on the same date at 15.48, after the Applicant's board had considered the query. The second query provided was made by Phyllis Walters at 15.18 on 16th March 2023. This related to the treatment of past charging of cars using common parts electricity as well as concerns in relation to other attempts to lower costs of the common parts. Patricia Barham replied at 15.55 on the same date, attaching a presentation; this attachment was not provided to the Tribunal.

8. There is no confirmation or evidence that the replies given were satisfactory to the recipients or whether any other queries were received or issues raised.

Law

9. Both section 20 of the Act and the Regulations relate to consultation with leaseholders before certain works are carried out or costs incurred. If this does not occur, the amount tenants are required to contribute can be limited.

10. Section 20ZA(1) of the Act provides:

> *"Where an application is made to [the appropriate 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"*

11. The Tribunal is the appropriate tribunal for these purposes. The works the subject of this application are qualifying works for the purposes for section 20ZA(1). The issue to be determined is therefore whether we are satisfied that it is reasonable to dispense with the consultation requirements in relation to the proposed contract with UKPN.

12. In the case of Daejan Investments Limited v Benson and others [2013] UKSC 14, the Supreme Court considered the principles to be applied by a tribunal in considering a section 20ZA(1) application. It held that the tribunal should focus on the extent to which tenants were prejudiced by a failure to consult.

Findings

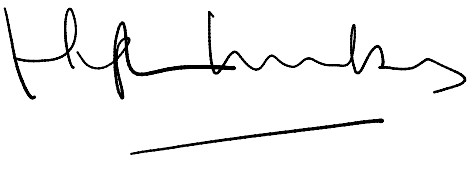
13. We have considered this matter solely on the papers before us. This application relates only to the dispensation from the consultation requirements set out at section 20 of the Act and the Regulations. It does not relate to the reasonableness or the liability to pay for the costs associated with the works.

14. We do not see any urgency in the proposed works that preclude the carrying out of a proper consultation with the leaseholders in this case. These are optional works and there is no requirement to carry these out, either urgently or at all. There can therefore be a proper consultation as to whether or not the works should be carried out. There is also a division between "contestable" and "non-contestable" works; the Applicant has provided no evidence that the former are incapable of being carried out by a third party. There could therefore be a consultation as to the manner in which at least parts of the works could be carried out and the costs of these.

15. We have noted the points raised by two of the leaseholders. We are also not satisfied that all leaseholders have been made aware of the application and that there may be other objections.

16. We have considered the principles referred to in the case of Daejan Investments Limited v Benson and others [2013] UKSC 14. Based on these, we consider that prejudice could be suffered by tenants if the requirement for consultation is dispensed with. That prejudice is financial; leaseholders could be obliged to contribute towards works which do not benefit them because they do not drive electric cars. They could also be obliged to contribute extra amounts if the "contestable" works are carried out by UKPN. We consider that this potential prejudice is real. Furthermore, we do not consider that the Applicant has demonstrated any reason why a consultation should not be carried out. There is no countervailing reason which may outweigh this prejudice.

17. As a result, we conclude that it is not reasonable to dispense with the consultation requirements and so dismiss the application.



Name: Judge H Lumby **Date:** 17 April 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).