FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AF/LDC/2023/0029 [PAPERREMOTE]**
Property	**:**	**34–60 Riverpark Gardens, Bromley, Kent, BR2 0BH**
Applicant	**:**	**Phoenix Community Housing Association (Bellingham and Downham) Limited**
Representatives	**:**	**-**
Respondent	**:**	**Leaseholders of the flats at Riverpark Gardens (individually listed and named in an Appendix to the application)**
Representative	**:**	**-**
Type of Application	**:**	**Application for the dispensation of consultation requirements pursuant to S. 20ZA of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge Professor Robert Abbey** **Kevin Ridgeway MRICS**
Date and venue of Hearing	**:**	**11 May 2023 by a paper-based decision**
Date of Decision	**:**	**11 May 2023**

DECISION

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Decisions of the tribunal

(1) The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act).

(2) The reasons for our decisions are set out below.

The applications

1. In relation to the several flats at **34 – 60 Riverpark Gardens, Bromley, Kent, BR2 0BH** ("the properties"" in "the building") the applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act, (see the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987), Schedule 4.)

A. The Applicant has applied for dispensation from the statutory consultation requirements in respect of **works to remedy dropped and defective soil pipework to the block.** The cost of the works which have been completed is £8,950.49.

2. In the circumstances given the need to ensure that the building soil drainage system was returned to a full working condition the steps were taken by the applicant as set out above and in the application to the Tribunal.

3. The relevant legal provisions and rules and appeal rights are set out in the Appendix and Annex to this decision.

The hearing

4. This has been a remote hearing on the papers which has been consented to or not objected to by the parties. The form of remote hearing was classified as P (Paper Remote). A face-to-face hearing was not held because no one requested the same or it was not practicable and all issues could be determined in a remote hearing on paper. The documents that the Tribunal was referred to are in the electronic bundle supplied by the applicant.

5. The Tribunal did not consider that an inspection was necessary. The Tribunal was able to access the detailed and extensive paperwork in the trial bundle that informed their determination. In these circumstances it would not have been proportionate to make an inspection given the current circumstances and the quite specific issues in dispute.

6. The tribunal had before it a trial bundle of documents prepared by one of the parties in accordance with previous directions. The trial bundle comprised electronic versions of copy deeds, contracts, reports documents, letters and emails.

The background and the issues

7. The building consists of several (13) leasehold flats. The individual residential properties are let on long leases and are all in a similar format and include similar terms, exceptions, provisions, covenants and conditions.

8. The respondent/tenants hold long leases of the individual properties which require the applicant to provide services and the tenant to contribute towards their costs by way of a service charge. The tenants must pay a percentage or share defined in their leases for the services provided. Accordingly, under the terms of the leases relating to the flats at Riverpark Gardens, the Landlord is responsible for maintaining the building soil drainage system and the leaseholders are required to contribute to the cost thereof through the service charge.

9. The application to be considered by the tribunal is in in respect of the soil drainage system in the building. The application was made to seek dispensation under section 20ZA of the 1985 Act from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act regarding works to be carried out to the properties. With regard to the grounds for seeking dispensation the applicant stated in the application that the works were in respect of urgent works in respect of repairs and replacement of the building soil drainage system so as to ensure the safety and protection of residents in the building and to prevent blockages in the system.

10. The matters in issue now fall to this Tribunal to determine as more particularly set out below.

The dispensation issues and decision

11. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements in in respect of urgent works to repair the soil drainage system in the building. It should be noted that this application does not concern the issue of whether or not service charges will be reasonable or payable.

12. Having considered all of the copy deeds documents and legal submissions provided by both parties, the Tribunal determines the issue as follows.

13. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.

14. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by such an application as is this one before the Tribunal. Essentially the Tribunal have to be satisfied that it is reasonable to do so.

15. The works carried out or to be carried out by the applicant are in respect of urgent works in respect of repairs and replacement of the building soil drainage system that serves the properties. Due to the emergency nature of the works no consultation process occurred prior to the commencement of the building soil drainage system replacement or repair works process.

16. The Tribunal did not receive any objections from any of the tenants sent directly to it and no written tenant objections were disclosed in the trial bundle supplied to the Tribunal in accordance with Tribunal Directions.

17. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14 by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.

18. The court came to the following conclusions:

    a. The correct legal test on an application to the Tribunal for dispensation is:
    "Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord's failure to comply with the requirements?"

    b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.

    c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord's failure to comply.

    d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.

e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

f. The onus is on the leaseholders to establish:

   i. what steps they would have taken had the breach not happened and

   ii. in what way their rights under (b) above have been prejudiced as a consequence.

19. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the lessor and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above. In this context it should also be remembered that no leaseholder appears to have lodged an objection to this application.

20. The tribunal was of the view that it could not find significant relevant prejudice to the tenants/respondents. The tribunal accepted the applicant's submission in this regard was sufficient to enable the Tribunal to make a finding allowing dispensation given the emergency nature of the works and the obvious need to try to keep all tenants and residents and flats safe and protected from blockages in the soil drainage system.

21. The applicant believes that the works were vital given the nature of the problems reported. The applicant also says that in effect the tenants of the properties have not suffered any prejudice by the failure to consult. On the evidence before it the Tribunal agrees with this conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application. It must be the case that soil drainage repairs and or replacement works should be carried out as a matter of urgency to ensure the safety and convenience of all leaseholders and hence the decision of the Tribunal.

22. Rights of appeal available to parties to this dispute are set out in an Annex to this decision.

23. The applicant shall be responsible for formally serving a copy of the tribunal's decision on all leaseholders. Copies must also be placed in a prominent place in the common parts of the property and placed on any website serving the residents and or maintained by the applicant.

Name:	Judge Professor Robert Abbey	**Date:**	11 May 2023

Appendix of relevant legislation and rules

Landlord and Tenant Act 1985 (as amended)

Section 20ZA Consultation requirements

(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.
....
(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.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,
  (d) the date at or by which it is payable, and
  (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs,

maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Annex - Rights of Appeal

1. 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.

2. 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.

3. 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.

4. 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.