FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/LDC/2023/0189**
Property	**:**	**21 Lennox Gardens, London SW1X 0DE**
Applicant	**:**	**The Wellcome Trust**
Respondents	**:**	**Leaseholders of 21 Lennox Gardens**
Type of application	**:**	**Dispensation from statutory consultation requirements**
Tribunal	**:**	**Judge Nicol**
Date of decision	**:**	**21st November 2023**

DECISION

The Tribunal grants the Applicant dispensation under section 20ZA of the Landlord and Tenant Act 1985 from the statutory consultation requirements in relation to works to replace the fire alarm system.

Reasons

1. This application for dispensation from the statutory consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 has been determined on the papers. A face to face hearing was not held because the Tribunal directed that the case was suitable for the paper track and the parties did not object.

2. The Applicant is the freeholder of the subject property, a block containing 6 flats. The Respondents are the lessees of the flats.

3. The fire alarm system at the block needed urgent replacement, having reached the end of its life. The Applicant has not explained how the system was left to get in that state or why its replacement could not have been planned in time for full consultation to take place. In any event, two estimates were obtained for replacement works of £11,979.60 and

£10,440. The Applicant went with the former, from RS Fire Protection, and the works were completed on 1st August 2023.

4. The works were subject to the consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 because the costs exceed the threshold of £250 per flat. The Applicant corresponded with the lessees to inform them of what is happening, although no relevant details or documents have been provided, and applied to the Tribunal for dispensation from the consultation requirements under section 20ZA of the Act.

5. Under section 20ZA(1), the Tribunal may dispense with the statutory consultation requirements if satisfied that it is reasonable to do so. The Supreme Court provided further guidance in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854:

   (a) Sections 19 to 20ZA of the Act are directed to ensuring that lessees of flats are not required to pay for unnecessary services or services which are provided to a defective standard or to pay more than they should for services which are necessary and provided to an acceptable standard. [42]

   (b) On that basis, the Tribunal should focus on the extent to which lessees were prejudiced by any failure of the landlord to comply with the consultation requirements. [44]

   (c) Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation requirements, an unconditional dispensation should normally be granted. [45]

   (d) Dispensation should not be refused just because a landlord has breached the consultation requirements. Adherence to the requirements is a means to an end, not an end in itself, and the dispensing jurisdiction is not a punitive or exemplary exercise. The requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by and what amount is to be paid for them. [46]

   (e) The financial consequences to a landlord of not granting dispensation and the nature of the landlord are not relevant. [51]

   (f) Sections 20 and 20ZA were not included for the purpose of transparency or accountability. [52]

   (g) Whether or not to grant dispensation is not a binary choice as dispensation may be granted on terms. [54, 58, 59]

   (h) The only prejudice of which a lessee may legitimately complain is that which they would not have suffered if the requirements had been fully complied with but which they would suffer if unconditional dispensation were granted. [65]

   (i) Although the legal burden of establishing that dispensation should be granted is on the landlord, there is a factual burden on the lessees to show that prejudice has been incurred. [67]

(j) Given that the landlord has failed to comply with statutory requirements, the Tribunal should be sympathetic to the lessees. If the lessees raise a credible claim of prejudice, the Tribunal should look to the landlord to rebut it. Any reasonable costs incurred by the lessees in investigating this should be paid by the landlord as a condition of dispensation. [68]

(k) The lessees' complaint will normally be that they have not had the opportunity to make representations about the works proposed by the landlord, in which case the lessees should identify what they would have said if they had had the opportunity. [69]

6. The Tribunal is disappointed that the further details referred to above were not provided but is just about satisfied that there are grounds for dispensing with consultation due to the urgency and significance of the works. None of the lessees have objected to the application for dispensation, either to the Applicant or to the Tribunal, let alone established any basis for thinking that they would be prejudiced by the lack of consultation.

7. The Tribunal's role in this application is limited to determining only if the statutory consultation requirements may be dispensed with. As stated in the Tribunal's directions, "This application does not concern the issue of whether any service charge costs will be reasonable or payable."

8. Given the lack of any objection or any evidence of prejudice, the Tribunal has determined that it is reasonable to dispense with the statutory consultation requirements.

Name: Judge Nicol **Date:** 21st November 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).