FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AP/LDC/2020/0142** **LON/00AP/LSC/2020/0251** **[PAPERREMOTE]**
Property	**:**	**(1) 1 - 70 Crane Heights, Waterside Way, London, N17 9GE** **(2) 1 - 70 Merin Heights, Waterside Way, London, N17 9GD** **(3) Egret Heights, Waterside Way, London, N17 9GJ** **(4) Kingfisher Heights, Waterside way, London, N17 9GL** **(5) Lapwing Heights, Waterside Way London, N17 9GP** **(6) Eagle Heights, Waterside Way, London, N17 9FU**
Applicant	**:**	**Hale Village Estates Limited**
Representatives	**:**	**Clarke Willmott LLP**
Respondent	**:**	**See attachment to applications (the total number of individual properties amounts to 417)**
Representative	**:**	**Not applicable**
Type of Application	**:**	**For the determination of the liability to pay and reasonableness of service charges (s.27A Landlord and Tenant Act 1985) AND Application for the dispensation of consultation requirements pursuant to S. 20ZA of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge Prof Robert Abbey** **Mr Kevin Ridgeway MRICS**

Date and venue of Hearing	**:**	**10 February 2021 by a paper-based decision**
Date of Decision	**:**	**11 February 2021**

DECISION

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 tribunal determines that the service charges for the properties are payable as follows, namely, that all service charges as demanded are payable

(3) Legal costs are payable as demanded

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

The applications

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charge payable by the applicants in respect of several service charges payable for services provided for various Blocks in Waterside Way London N17 9GE, (the properties) and the liability to pay such service charge.

2. The applicant also seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 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.) The request for dispensation concerns major fire precaution works ("the major works") carried out to the properties.

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 (PaperRemote). A face-to-face hearing was not held because it was not practicable given the COVID-19 pandemic (and the need for social distancing) and 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. In the context of the COVID-19 pandemic and the social distancing requirements the Tribunal did not consider that an inspection was

possible. However, 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 the one of the parties in accordance with previous directions. The trial bundle comprised electronic versions of copy deeds, contracts, documents, letters and emails.

The background and the issues

7. The properties which are the subject of this application comprise various different Blocks within the Hale Village locality in the London Borough of Tottenham and are the Blocks listed above comprising 417 individual properties. The individual properties are let on long leases and are all in the same format and include all the same provisions covenants and conditions.

8. The respondent/tenants hold long leases of the individual properties which require the applicant/landlord to provide services and the tenant to contribute towards their costs by way of a service charge. The applicant tenants must pay a percentage defined in their leases for the services provided.

9. The issues the applicant raised covered the reasonableness and payability of the charges raised for the major works listed in the tribunal application and carried out by the applicant. In the application the applicant stated that the service charge items in issue were:-

> "*Waking Watch costs currently in the sum of £267,868.08 (inclusive of VAT) and ongoing until fire alarm system installed, total costs to be confirmed. Fire Alarm Installation and associated costs in the sum of £383,973.60 (inclusive of VAT) Legal fees (plus VAT) for dealing with this application and the related application for dispensation from the Consultation Requirements in accordance with Section 20ZA Landlord and Tenant Act 1985…. We wish to seek an order from the Tribunal that the cost of the Waking Watch and Fire Alarm Installation and associated costs including legal fees plus VAT are recoverable under the service charge provisions within the Leases in accordance with Section 27A of the Landlord and Tenant Act 1985.*"

10. A second application was also considered by the tribunal. This was following prior directions that meant that the two interlinked applications be considered together. The second 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 carried out to the properties. With regard to the grounds for seeking dispensation the applicant stated in the S20ZA application that

> *"The qualifying works relate to the waking fire watch and the installation of a Fire Alarm System within the common areas of the properties and within the individual residential flats. The qualifying works in relation to the waking watch commenced on 11 December 2019 and will continue until the fire alarm system is completed. The qualifying works in relation to the fire alarm system commenced on 13 July 2020 and are expected to take around 3 months to complete. The landlord was unable to comply with the formal consultation process under Section 20 of the Landlord and Tenant Act 1985. To protect the health and safety of the leaseholders, the works set out above were urgently required and the notice periods for each stage of the consultation procedure as prescribed by the Service Charges (Consultation Requirements) (England) (Regulations) 2003 would have resulted in an unacceptable delay to the works being carried out to the detriment to the Respondents."*

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

The dispensation issues and decision

12. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether or not service charges will be reasonable or payable, that concern is considered subsequently.

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

14. 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.

15. 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.

16. The works carried out by the applicant were emergency fire safety works that arose after a fire safety survey had been carried out. After the survey it was clear that the Blocks did have problems with cladding and the construction materials of balconies and that as such a waking watch was put in place along with the subsequent installation of a fire alarm system. These major works being the subject of the application to the tribunal were by the size and cost caught by the consultation provisions. But of course, due to the emergency nature of the major works no consultation process occurred prior to the commencement of the major works. The applicant states in its evidence to the Tribunal that "*none of the leaseholders have sent objections to the Tribunal regarding this application. I understand that some leaseholders have written to the Tribunal in support of this application*."

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.

20. The tribunal was of the view that they could not find significant relevant prejudice to the tenant/respondents. There was no relevant evidence before the tribunal that any had been required to pay for inappropriate services or had been required to pay more than was appropriate given the nature of the fire precaution works required to keep residents safe. The tribunal accepted the landlord's submission in this regard was sufficient to enable the Tribunal make a finding allowing dispensation given the emergency nature of the major works and the obvious need to try to keep residents as safe as possible. The absence of objections underlines this as does expressions of support from some leaseholders.

The reasonableness of service charge issues and decision

21. The tribunal is of the view that the service charges for the major works are reasonable. The issue is straight forward. Having carried out a safety survey it became apparent that there were building defects that could put residents at risk should a fire occur. This necessitated emergency fire precautions and works. In particular a waking watch was put in place and then this was replaced by a new fire alarm system. The applicant took the prudent step of seeking quotes from some seven fire prevention companies and received three quotes and made a reasonable selection of one company from those submitting quotes. The applicant then arranged for the fire alarm works to be put in place and by doing so once completed brought to an end the very expensive but necessary waking watch. These steps seemed to the Tribunal to be both reasonable and appropriate given the problems identified in the construction of the Blocks.

22. The applicant stated that " service charge provisions can be found in Schedule 6 of the Leases. The service charges are broken down into "Sectors" in respect of the different areas to which they relate. The Respondents have covenanted to pay service charges to the Applicant in accordance with the following provisions in the Leases: Schedule 6, Sector 2 (External Block Costs), paragraph 1.8 — Fire Regulations: complying with the requirements and directions of any legislation statutes or regulations which may from to time affect or relate to the Estate or any part of it insofar as such compliance is not the responsibility of the tenant of any of the Residential Units including but without prejudiced to the generality of the foregoing the Control of Asbestos at Work Regulations 2002 and Regulatory Reform (Fire Safety) Order 2005 or any similar or like legislation in the future including but not limited to inspections assessments preparation of

plans and all costs and sums payable in engaging or employing contractors and consultants.

23. Schedule 6, Sector 3 (Internal Block Costs), paragraph 1.6 — Fire Protection Systems: Inspecting maintain repairing and renewing the fixed and portable fire protection systems within the Block. Schedule 6, All Sectors (Cost as applicable to Sectors 1 2 3 & 4), paragraph 13 — complying with the requirements and directions of any competent authority and with the provisions of all statutes and all regulations orders and bye-laws made thereunder relating to the Block insofar as such compliance is not the responsibility of the tenant of any of the Residential Units."

24. The witness statement of Mr Nigel Fletcher (the company secretary for the applicant) evidences that the initial fire risk is in relation to defective materials used for the cladding and balconies of the external Blocks. So, in order to safeguard the residents of the Blocks from fire risk, the London Fire Brigade recommended that a fire alarm system be installed to the common areas within the communal areas of the Blocks and the individual flats as an interim safety measure.

25. The company secretary for the applicant, in his evidence stated that the new fire alarm system works started on 13 July 2020 and were completed and signed off by the fire safety engineers on 12 November 2020. The total cost inclusive of VAT was £382,772.51. As a result of the completion of the fire alarm system the waking watch was no longer required. The company secretary confirmed that the waking watch was in place from 11 December 2019 until 27 November 2020 at a total cost of £431,144.64 inclusive of VAT. These figures demonstrate that the installation of the fire alarm system was prudent and reasonable as it afforded safety to the residents and brought an end to the costly waking watch. In the applicant's evidence it was stated that the actual costs per leaseholder will equate to approximately £2010.30 inclusive of VAT and disbursements.

26. As was stated in the service charges application, the applicant sought approval of legal fees plus VAT being recoverable under the service charge provisions within the Leases in accordance with Section 27A of the Landlord and Tenant Act 198. This was for the legal work performed in connection with the major works and the dispensation application. Under the terms of the leases of the various properties in the Blocks the respondents have covenanted with the applicant to pay legal fees pursuant to Schedule 6, All Sectors (Cost as applicable to Sectors 1 2 3 & 4), paragraph 12 which provides the proper and reasonable costs of acquiring legal advice and services in relation to any matter affecting all or any part of the Block or any other matter of whatever nature that the Manager may properly decide. This clearly gives the applicant authority from the lease terms to seek legal costs in connection with these applications.

27. The company secretary again confirmed in his written evidence before the Tribunal that these came to a total of £24,374.12 inclusive of VAT and disbursements. The Tribunal took the view that these charges appeared reasonable in the context of the complex nature of the issues and the four hundred and seventeen tenants involved in the two applications.

28. For all the reasons set out above the Tribunal is of the view that the service charges are reasonable and that the amounts should be as set out in the application. The Tribunal has no evidential basis for reducing or disallowing the sums demanded by the applicant and so they are payable by the respondents in full.

Name: Judge Professor Robert M. Abbey **Date:** 11 February 2021

Appendix of relevant legislation and rules

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

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.

20B Limitation of service charges: time limit on making demands.

(1)If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2)Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

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.