FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/LDC/2023/0026**
Property	**:**	**(1) Ashmore House North, E3 3QQ;** **(2) Gregale House, E3 3FX; and** **(3) Lavanter House, E3 3FY**
Applicant	**:**	**Clarion Housing Association**
Representative	**:**	**Rendall and Rittner Ltd.**
Respondents	**:**	**(1) Various leaseholders of Ashmore North;** **(2) Spitalfields Housing Association Limited; and** **(3) Providence Row Housing Association**
Representative	**:**	**N/A**
Interested Person	**:**	**Berkeley Seventy Seven Limited**
Type of application	**:**	**For dispensation under section 20ZA of the Landlord & Tenant Act 1985**
Tribunal member	**:**	**Tribunal Judge B MacQueen**
Date of decision	**:**	**13 November 2023**

DECISION

Decision of the Tribunal

1. The Tribunal determines that it is reasonable for the Applicant to dispense with the consultation requirements in relation to the works for the reasons set out in this decision.

Introduction

2. The Applicant sought an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the Act") for retrospective dispensation of the consultation requirements in respect of remedial works required to replace a failed automatic opening vent system (AOV). The works included the removal and disposal of the current AOV systems in 3 properties, which are said to have posed a health and safety risk to the occupiers at (1) Ashmore House North, E3 3QQ; (2) Gregale House, E3 3FX; and (3) Lavanter House, E3 3FY ("the Property").

3. The Applicant is the head lessee of the Property, and the Respondents are a mix of shared ownership and housing association tenants. The landlord is Berkeley Seventy Seven ltd (the "Interested Person").

4. A bundle of documents totalling 294 pages has been provided by the Applicant. This includes a report dated 5th May 2022 from Profire Engineering ltd giving their recommendations for the works needed, an AOV Mitigating Risk Assessment Report by Gresham (Surveyors) dated 8th June 2022, and the wording of the statement sent on behalf of the Applicant to tenants which explains the reason for the application (this is not dated or signed). Additionally, specimen copies of leases are provided for Levanter House, Gregale House and Ashmore House.

5. The report dated 5th May 2022 by Profire Engineering ltd detailed the defaults at each Property, and noted that key switches for the AOV

system were missing or not functioning. At page 15 of the bundle the report recommended that repairs are carried out to the AOV system and concluded that if the satellite panels were obsolete, it may be possible to replace the system.

6. The AOV Mitigating Risk Assessment dated 8th June 2022 completed by Gresham Ltd stated (page 36 of the bundle/page 20 of the report) that in relation to Ashmore House North, the AOV System was completely inoperative and recommended that the system is replaced, identifying this as a substantial risk. In relation to Gregale House the report concluded that the 7th floor actuator is defective and recommended the replacement of the actuators/system. This risk was identified as moderate. In relation to Levanter House, the alarm panel in fault system was said to be working on an auto setting and the report therefore recommended the fault was rectified. This risk was also identified as moderate.

7. A statement was sent to tenants to explain the nature of the work (page 42 of the bundle). This statement set out that the Applicant had been advised by their maintenance contractor of failed components in the AOV system that required replacement, and that in speaking with the manufacturer of the system, the Applicant had subsequently been advised that the system was considered obsolete and was no longer supported. This meant that the required parts were not available. Given that the AOV system formed a part of the fire safety measures for the Property, it was critical that this was in full working order. Therefore, as the current systems could not be successfully repaired, the decision was taken to replace them. This would allow a new system to be installed to ensure effective operation, and also ensure that the system could be supported in future should further repairs be required.

8. Within the application form (page 9 of the bundle), the Applicant stated that dispensation from the requirements to consult tenants before work is commenced was sought so that the AOV system could be replaced as quickly as possible, so that the amount of time the system was not working effectively would be minimised. The work was therefore urgent given that the system is crucial for the ongoing safety of the residents.

9. On 24th January 2023, the Applicant made this application for retrospective dispensation and confirmed that a notice of intention and statement of estimates would be issued in parallel to this dispensation application. The Applicant also stated that the intention was to proceed with the works in the meantime due to the urgent nature.

10. On 12th April 2023, the Tribunal issued Directions. The Applicant was directed to send to each leaseholder (and any residential sublessees) a copy of the application, and to display it in the common parts.

11. By email dated 28th April 2023, Matthew Sanderson, MIRPH, Senior Property Manager and responsible person confirmed that the applicant had been hand delivered on 28th April 2023, and displayed in common parts on 19th April 2023.

12. The Respondents were directed to notify the Applicant and the Tribunal if they objected to the application.

13. None of the Respondents have objected to the application.

Relevant Law

14. This is set out in the Appendix annexed below. The only issue for the tribunal is whether it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable, or the possible application or effect of the Building Safety Act 2022.

Decision

15. The Tribunal's determination took place without parties attending a hearing, in accordance with the Tribunal's directions. This meant that this application was determined on 13th November 2023 solely on the basis of the documentary evidence filed by the Applicant. As stated earlier, no objections had been received from any of the Respondents nor had they filed any evidence.

16. The relevant test to the applied in an application such as this has been set out in the Supreme Court decision in **Daejan Investments Ltd v Benson & Ors** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no financial prejudice in this way.

15. The issue before the Tribunal was whether dispensation should be granted in relation to the requirement to carry out statutory consultation with the leaseholders regarding the overall works. As stated in the directions order, the Tribunal was not concerned about the actual cost that has been incurred.

16. The Tribunal was satisfied that the Respondents have been properly notified of this application and had not made any objections.

17. Accordingly, the Tribunal granted the application for the following reasons:

(a) the Tribunal was satisfied that the nature of the works had to be undertaken by the Applicant sooner rather than later and notes in particular the advice that had been obtained from the fire safety consultants, Greshams, that the replacement AOV system was urgent and required to ensure the safety of all residents.

(b) The Tribunal was also satisfied that if the Applicant carried out statutory consultation, it was likely that there would be delay.

(c) the Tribunal was satisfied that the Respondents have been kept informed of the need, scope and estimated cost of the proposed works.

(d) the Tribunal was satisfied that the Respondents have been served with the application and the evidence in support and there has been no objection from any of them.

(e) importantly, the real prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred by making a separate service charge application under section 27A of the Act.

18. The Tribunal, therefore, concluded that the Respondents were not being prejudiced by the Applicant's failure to consult and the application was granted as sought.

19. It should be noted that in granting this application, the Tribunal makes no finding that the scope and estimated cost of the repairs are reasonable.

Name:	Tribunal Judge Bernadette MacQueen	**Date:**	13th 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).

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.