FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/LDC/2023/0279**
Property	**:**	**K Building, 43-45 East Smithfield, London E1W 1AP**
Applicant	**:**	**K Building Management Co Ltd**
Representative	**:**	**Hurford Salvi Carr Property Management Ltd**
Respondents	**:**	**Leaseholders of K Building (see list attached to application)**
Type of application	**:**	**Dispensation from statutory consultation requirements**
Tribunal	**:**	**Judge Nicol**
Date of decision	**:**	**23rd January 2024**

DECISION

The Tribunal grants the Applicant dispensation under section 20ZA of the Landlord and Tenant Act 1985 from the statutory consultation requirements in respect of further works to the roof of the ground floor commercial premises at K Building, 43-45 East Smithfield, London E1W 1AP.

Reasons

1. This application for dispensation from the statutory consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") 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 14 flats on 5 floors plus commercial premises at the ground and basement levels. The Respondents are the lessees of the flats.

3. In January 2022 Celador Consulting produced a report which showed that previous works to the flat roof to the ground floor commercial premises had been carried out poorly. The Applicant's agents carried out consultation on works which eventually cost around £19,885 plus VAT in accordance with the requirements under section 20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003 because the cost exceeded the threshold of £250 per flat.

4. Unfortunately, there were further leaks from the roof. Celador advised that further work needed to be carried out, in particular to move 5 condensor units located on the roof, at a further cost of £10,360 plus VAT.

5. The Applicant took the view that consultation was probably not required for the further works in accordance with the Court of Appeal's decision in *Reedbase Ltd v Fattal* [2018] EWCA Civ 840; [2018] HLR 28 but that, since the cost was a significant proportion of the total cost, it would be best to proceed as if it was. They understood the works to be urgent with winter fast approaching so that full consultation would not be possible. In November 2023 the agents corresponded with the lessees in to inform them of what is happening and, at the same time, the Applicant applied to the Tribunal for dispensation from the consultation requirements under section 20ZA of the Act.

6. 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]

7. Three lessees wrote to the Tribunal in accordance with the Tribunal's directions indicating that they objected to dispensation being granted:

- Flat 4 – Noel Li
- Flat 11 – Sejal Thanki
- Flat 12 – Maryna Bychkova

8. Their objections were:

(a) The Applicant has had enough time for full consultation since they found out about the problem. However, part of the delay has been caused by the Tribunal process and the Tribunal must consider the position as at the date of its decision – if it wasn't urgent at first, it is now. Moreover, this doesn't constitute or cause any prejudice by itself. The time involved has also given the Respondents the space to set out what they would have said if they had been consulted and to identify clearly any prejudice but they have not done so.

(b) It is not clear whether the Applicant has pursued its remedies against the original contractor. The Applicant has pointed out that such remedies may be difficult to pursue but, in any event, the Tribunal cannot see how this relates to consultation or the consequences of a lack of consultation.

(c) The Applicant did not obtain multiple quotes. The Applicant has responded that having two contractors carry out two parts of what is essentially the same job carries the risk of problems further down the line. Also, it is not clear that any contractor could possibly have been able to quote a lower figure for the further works, given that they were a continuation of the previous works. The Respondents provided no alternative quotes.

(d) The Respondents complained that the list of works in the section 20 notice served on 6th November 2023 differed from that in the application so that it is not clear what works need to be carried out. The Tribunal could not find any differing list. In any event, the Respondents' lack of understanding does not establish any prejudice arising from a lack of consultation. If the Applicant could not establish what the work were precisely, this might go to reasonableness, but not to prejudice arising from non-compliance with the statutory consultation requirements.

(e) The Respondents suggested that they thoughts it was proposed to remove A/C units which are on the walls but there is no indication of that. The 5 units referred to are on the roof.

9. 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."

10. Given the lack of any sustainable 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).