



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

<b>Case reference</b>	:	<b>CAM/26UB/LDC/2023/0060</b>
<b>Property</b>	:	<b>1-14 Church Court, Churchfields, Broxbourne, Hertfordshire EN10 7JR</b>
<b>Applicant</b>	:	<b>Birmon (Broxbourne) Management Company Limited</b>
<b>Representative</b>	:	<b>Management Company Services</b>
<b>Respondents</b>	:	<b>The leaseholders</b>
<b>Type of application</b>	:	<b>For dispensation of the consultation requirements under section 20ZA Landlord and Tenant Act 1985</b>
<b>Tribunal member</b>	:	<b>Judge K. Saward</b>
<b>Date of decision</b>	:	<b>31 January 2024</b>

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**DECISION AND REASONS**

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**Description of determination**

This has been a determination on the papers. A face-to-face hearing was not held because all issues could be determined on paper and no hearing was requested. The documents comprise an unpaginated bundle of some 68 pages from the Applicant. It includes the application form, letters sent to the leaseholders regarding the application, tribunal directions, quotation, and a copy of a specimen lease. The contents of all these documents are noted.

The order made is described below.

## **Decision of the tribunal**

- (1) The tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with all the consultation requirements in respect of works for cavity wall insulation within the individual flats.

## **REASONS**

### **The application**

1. The applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985, as amended (“the 1985 Act”) for the dispensation of consultation requirements in respect of certain “qualifying works” (within the meaning of section 20ZA).
2. The applicant is the landlord of 1-14 Church Court, Churchfields, Broxbourne (“the property”), being a purpose-built block of 13 self-contained flats arranged over three floors, built circa the 1970’s.
3. The respondents are the leaseholders of the flats in the property who are potentially responsible for the cost of the works under the terms of their lease.
4. The qualifying works are described in the application as cavity wall insulation works needed due to severe damp and mould issues within the individual flats. Works commenced on 24 November 2023. The application is therefore retrospective in nature.
5. By virtue of sections 20 and 20ZA of the 1985 Act, any relevant contributions of the respondents through the service charge towards the costs of these works would be limited to a fixed sum (currently £250) unless the statutory consultation requirements, prescribed by the Service Charges (Consultation etc) (England) Regulations 2003 were: (a) complied with; or (b) dispensed with by the tribunal. In this application the only issue is whether it is reasonable to dispense with the consultation requirements.
6. **Any issue as to the cost of the works may be the subject of a future application by the landlord or leaseholders under section 27A of the 1985 Act to determine the payability of any service charge under the lease.**

### **The law**

7. Section 20ZA of the Act, subsection (1) provides as follows:

*'Where an application is made to a 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.'*

8. In the case of *Daejan Investments v Benson and others* [2013] UKSC 14 the Supreme Court set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of sections 19 to 20ZA of the Act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate, went on to state *'it seems to me that the issue on which the [tribunal] should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements'*.

### **Paper determination**

9. The application is dated 29 November 2023. Directions were issued by the tribunal on 5 December 2023. The applicant landlord was required by 19 December 2023 to send to each of the respondents, by hand delivery, first-class post (or email, if practicable) copies of the application form, a description of the works, an estimate of the cost, any other evidence relied upon and the tribunal directions.
10. Copies of the letters sent to each leaseholder on 18 December 2023 have been supplied to the tribunal along with written confirmation from the applicant's representative of compliance with the above direction by sending the letters by first class post.
11. The directions gave those leaseholders who oppose the application until 9 January 2024 to respond to the tribunal by completing a reply form and returning it to the tribunal. At the same time, any leaseholder in opposition would need to send to the landlord a statement in response to the application with a copy of their reply form and copies of documents relied upon.
12. No response or objection has been submitted by the respondents who have taken no active part in this application.
13. The directions required the landlord to prepare a bundle of documents containing all the documents on which the landlord relies, including copies of any replies from the leaseholders. A bundle was submitted to the tribunal and each leaseholder, as required. The directions provided that the tribunal would determine the application based on written representations unless either party made a request for an oral hearing by 30 January 2024. No such request was received. Therefore, this

application has been determined by the tribunal on the information supplied by the applicant.

### **Consideration**

14. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act “*if satisfied that it is reasonable to dispense with the requirements*”.
15. The applicant explains that the decision was taken to proceed with the cavity wall insulation works without compliance with the consultation requirements within section 20 of the 1985 Act so that the works were done before winter due to the severity of damp and mould to the flats.
16. One quote of £5,290.39 for the cavity wall insulation was obtained dated 21 October 2023.
17. Only brief details of the works and the condition of the flats is provided. Nevertheless, in the absence of any objections or submissions from the respondents, the tribunal has no reason to question the need and urgency of the works before the onset of winter given the description of severe damp and mould within the flats. In all likelihood, severe damp and mould would adversely affect the residents’ living conditions and could worsen over the winter with colder and wetter weather. In such circumstances, there would be greater imperative to take steps to improve the situation for residents before conditions worsen.
18. As none of the respondents have raised objection to the works, the tribunal finds no evidence that they would suffer prejudice if dispensation were to be granted.

### **The Tribunal’s decision**

19. In the circumstances set out above, the tribunal considers it reasonable to dispense with the consultation requirements. Accordingly, dispensation is granted pursuant to section 20ZA of the 1985 Act.
20. This decision does not affect the tribunal’s jurisdiction upon any future application to make a determination under section 27A of the Act as to the reasonableness of the work and/or whether any service charge costs are reasonable and payable.
21. There is no application before the tribunal for an order under section 20C (limiting the ability of the landlord to seek their costs of the dispensation application as part of the service charge). This could be the subject of a future application should any costs be charged to the leaseholders.

22. It is the responsibility of the applicant to serve a copy of this decision on all respondents.

**Name: Judge K. Seward**

**Date: 31 January 2024**

### **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).