FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/LDC/2023/0299**
Property	**:**	**2-9 Cambridge Gate, London, NW1 4JX**
Applicant	**:**	**Cambridge Gate Management Limited**
Representative	**:**	**Jamie Fletcher of Olympus Management**
Respondents	**:**	**The Leaseholders of 2-9 Cambridge Gate, NW1 4JX**
Representative	**:**	**Not Applicable**
Type of application	**:**	**For dispensation under section 20ZA of the Landlord & Tenant Act 1985**
Tribunal	**:**	**Tribunal Judge B MacQueen**
Date of decision	**:**	**4 March 2024**

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. This application concerns 2-9 Cambridge Gate, London, NW1 4JX (the Property), of which the Applicant is the landlord.

3. The Respondents are the Leaseholders of the Property and a list of all leaseholders is given at Appendix A of the Applicant's bundle.

4. On 10 November 2023, the Applicant made this application pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the Act") for retrospective dispensation of the consultation requirements in respect of remedial repairs to the communal heating and hot water system.

5. The application form stated that this is a retrospective application in that the required repair works have been carried out/completed.

6. The works were described as necessary to rectify a reoccurring issue in the hot water and heating system. The works included removing water meters which were causing a restriction, and replacement with full sized pipework, cutting out the existing strainers and fitting new strainers with isolation valves so strainers could be easily removed in future. The estimated cost of the works was said to be £20,400, excluding VAT.

7. The Applicant described the works as urgent in order to prevent disruption of hot water/heating throughout the Property, especially over the winter months.

8. On 12 December 2023, the Tribunal issued Directions. In particular, the Applicant was directed to serve a copy of the application and the Directions on all the affected leaseholders and any residential sublessees by 2 January 2024. The Applicant was ordered to display a copy of the application in a prominent place in the common parts of the Property.

9. On 21 December 2023, Jamie Fletcher emailed the Tribunal and confirmed that a copy of the Tribunal's Directions and application form had been displayed in each common area hallway and a copy of the documents had been sent to all leaseholders by post on 21 December 2023. The Applicant confirmed in their application form that they had sent a letter to the leaseholders on 10 November 2023 to inform them of the works. On 13 February 2024, Jamie Fletcher emailed the Tribunal to confirm that no communication had been received from the leaseholders.

10. A bundle of documents totalling 125 pages was provided by the Applicant. This included the application form, an undated letter from Axon detailing the works needed, photograph of the clogged strainer, quotation for the works, and a specimen copy of leases.

11. The Tribunal as not received any objections from the Respondents.

Relevant Law

12. 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

13. 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 4 March 2024 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.

14. The relevant test to be applied is 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 Respondents 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 referred to the email of 21 December 2023 and 13 February 2024, from Jamie Fletcher and was satisfied that the Respondents had 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 so that there was limited disruption to the heating/hot water for the Property.

(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 were informed of the need and scope of the proposed works.

(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 made no finding that the scope and estimated cost of the repairs are reasonable.

Name: Tribunal Judge Bernadette MacQueen **Date:** 4 March 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).

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.