FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AC/LDC/2023/0232**
Property	**:**	**Coachman's Lodge, 24-26 Friern Park, Finchley, London N12 9DN**
Applicant	**:**	**Friars Place (North Finchley) Management Co Ltd**
Representative	**:**	**HML Group Small Blocks Team**
Respondents	**:**	**Leaseholders of Coachman's Lodge (see list attached to application)**
Type of application	**:**	**Dispensation from statutory consultation requirements**
Tribunal	**:**	**Judge Nicol**
Date of decision	**:**	**30th April 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 works to identify and resolve a mains water leak at the subject property.

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 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 management company for the subject property, a block containing 12 2-bedroom flats, under a tripartite lease. The Respondents are the lessees of the flats.

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3. Under section 20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003, when the cost of building works exceeds the threshold of £250 per flat, consultation must be carried out with the lessees. On 8th August 2023, the Applicant made an application to the Tribunal for dispensation from those consultation requirements for certain works in which they stated,

> The works were to identify and resolve a mains water leak which turned out to be in a first floor riser. This penetrated into the communal areas and caused a section of ceiling to fall on the ground floor. The contractor [Leak Detection Specialists Ltd] carried out trace and access [on 16th May 2023] and had to cut sections of the riser cupboard to access the pipe. As the pipe was a mains supply, the contactor had to turn off the mains and drain the pipes to remove the section of damaged pipe to be replaced with copper pipe. Consequently, the stop cocks were then replaced to all flats.
>
> The management company obtained 2 quotes and a further quote was obtained by one of the leaseholders for the development. The [Applicant] circulated these quotes by email to all leaseholders for feedback and their input on 25/5/23. 5 approvals were received from leaseholders within the first few days and no objections were raised or received. The Directors called an emergency meeting on 26th May 2023 to discuss the matters further, attendance was good and no further objections were raised to the management company's proposed course of action. The contractor who was chosen by those in attendance of the meeting was the cheapest of the three received. When planning the works the consultation with leaseholders was paramount, the conversation with the leaseholders was ongoing from start to finish of the works to ensure that they were happy with the works going ahead as well as the costings of the work.
>
> The full s20 consultation process could not be observed in this situation due to the emergency nature of the works. The damage the water penetration caused was significant and a large section of the ground floor corridor ceiling had come down, urgent action needed to be taken to stop the leak and make the area safe. If water ingress is not dealt with promptly, the long term damages can been more serious and more expensive to resolve. There was also a health and safety concern for residents — part of the communal corridor ceiling had fallen down as it was saturated with water, if the leak was not stopped immediately, further parts of the building would get damaged and could potentially fall on residents, causing unnecessary injury to residents or their visitors.

4. 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]

5. 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 <u>not</u> concern

the issue of whether any service charge costs will be reasonable or payable."

6. Given the amount of consultation which was carried out and the lack of any objection from the lessees, either to the works or to dispensation, let alone any evidence of prejudice, the Tribunal has determined that it is reasonable to dispense with the statutory consultation requirements.

Name: Judge Nicol **Date:** 30th April 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).