FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AQ/LDC/2024/0035**
Property	:	**1-18 Brookshill Gate, Harrow Weald, Middlesex, HA3 6RU**
Applicant	:	**Brookshill Gate RTM Company Limitied**
Representative	:	**Warwick Estates, Managing Agent**
Respondents	:	**The leaseholders of 1-18 Brookshill Gate**
Representative	:	**N/A**
Type of application	:	**For dispensation under section 20ZA of the Landlord & Tenant Act 1985**
Tribunal member	:	**Tribunal Judge I Mohabir**
Date of decision	:	**11 June 2024**

DECISION

Introduction

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the Act") for *retrospective* dispensation with the consultation requirements in respect of roof and guttering repairs at the property known as 1-18, Brookshill Gate, Harrow Weald, Middlesex, HA3 6RU ("the property").

2. The Applicant is the Right to Manage company for the property and the Respondents are the long leaseholders.

3. The property is described as being two residential blocks containing 9 flats each.

4. It is the Applicant's case that the roof and guttering repairs were necessary because there was water ingress from the roof affecting Flats 18 and 16, this was also leaking into the gas cupboard on the ground floor of flats 10-18. There was water also ingress from the roof in blocks 1-9, which has stained the ceiling of the block. The second floor of the block for Flat 10-18 was heavily affected with damp in the communal parts from the leak. There was a leak from the guttering, which was contributing to the damp within the communal area and Flat 18. To mitigate loss and ensure a health and safety risk was prevented, the works were instructed as the leak was going directly into a gas cupboard. In addition, due to heavy rainfall and bad weather conditions in December 2023, it was impractical to wait the duration of a section 20 consultation, as this would have allowed further damage and water ingress into the building.

5. The estimated cost of investigating the cause of the water ingress and carrying out the remedial work was £10,996. As the Tribunal understands it, the work has been carried out and the actual cost of this is unknown. However, the cost of the work does not form part of this application.

6. On 27 March 2024, the Tribunal issued Directions. The Respondents were directed to respond to the application stating whether they objected to it in any way.

7. Initially several of the leaseholders objected to the application. However, subsequently, all but one of the leaseholders withdrew their objection. The only objection that remains is from the leaseholders of Flat 9, Suraj Shah and Heena Modi.

8. The basis of the objection is that the water ingress was reported to the managing agent in September and October 2023 and nothing was done to address this. Remedial work was not carried out until 19-21 December 2023. The tenants submit that if the work was truly urgent, the managing agent would not have waited 3 months before having it carried out and it would have avoided further damage to the fabric of the building.

9. The tenants complain that they were not consulted in any way by the managing agent and the Applicant's director only received the estimate from them 4 days before the work commenced and this only occurred after they were repeatedly chased for the information. They object to being treated in this way.

Relevant Law

10. This is set out in the Appendix annexed hereto.

Decision

11. As directed, the Tribunal's determination "on the papers" took place on 1 June 2024 and was based solely on the documentary evidence filed by the Applicant. The lessees of Flat 9 did not request a hearing and did not file any evidence in support of their objection.

12. 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 prejudice in this way.

13. 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 roof and guttering works. As stated in the directions order, the Tribunal is not concerned about the actual cost that has been incurred.

14. The Tribunal granted the application for the following main reasons:

    (a) the nature of the objection made by the lessees of Flat 9 was in effect about a management failure by the managing agent. They appear to accept the need to carry out the remedial work. Indeed, the complaint is that it was not carried out sooner. This appears to have some force because the statement filed on behalf of the Applicant gives no explanation for the alleged delay that occurred between October and December 2023. However, in the Tribunal's judgement wanting the work carried out sooner is not a basis for refusing the application. Indeed, if anything, it supports the argument that consultation was not required because it would have resulted in further delay.

    (c) The Tribunal was satisfied that any delay incurred by the Applicant having to carry out statutory consultation would inevitably have resulted in further significant loss of amenity to the affected leaseholders and possibly resulted in greater overall remedial cost because of further deterioration in the fabric of the building. . The Tribunal made no finding that such alleged deterioration occurred because no such evidence was presented to it.

    (d) importantly, any 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. If the alleged delay did in fact result in greater costs being incurred to carry out the

remedial work and this resulted in financial prejudice to the leaseholders, the correct challenge would be in a section 27A application. However, two points should be made. Firstly, any such application will have to be supported by the appropriate evidence about additional costs being incurred. Secondly, any such application would be against the leaseholders own Right to Manage company.

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

Name:	Tribunal Judge I Mohabir	**Date:**	11 June 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.