



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

**Case Reference** : **LON/00AB/LDC/2023/0089**

**Property** : **116-138 Whalebone Lane South,  
Dagenham, Essex, RM8 1BA**

**Applicant** : **Private Rented Property Licensing  
Team London Borough of Barking  
and Dagenham**

**Respondents** : **Mr T. Martin (116)  
Mr S.T. Ahmed & Ms S Ahmed (138)  
Mr O. Hollis (132)  
Mr P. Clarke (120)  
Ms KR Layton (126)  
Miss D Evans (122)**

**Type of Application** : **Dispensation from consultation  
requirements under Landlord and  
Tenant Act 1985 section 20ZA**

**Tribunal** : **Judge Professor R Percival**

**Venue** : **Remote paper determination**

**Date of Decision** : **1 December 2023**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Tribunal, pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”), grants dispensation from the consultation requirements in respect of the works the subject of the application.

## **Procedural**

1. The landlord submitted an application for dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 (“the 1985 Act”) and the regulations thereunder, dated 28 September 2022.
2. It appears that the processing of the application was delayed as a result of a problem with the payment of the application fee. The Tribunal gave directions on 5 October 2023. The directions provided for a form to be distributed to those who pay the service charge to allow them to object to or agree with the application, and, if objecting, to provide such further material as they sought to rely on. The application and directions was required to be sent to the leaseholders and any sublessees, and to be displayed as a notice in the common parts of the property. The deadline for return of the forms, to the Applicant and the Tribunal, was 20 November 2023.
3. The Applicant confirmed that the relevant documentation had been sent to the leaseholders on 16 October 2023, and that the notices had been posted (providing photographic evidence).
4. No response from any of the leaseholders has been received by the Tribunal. The Applicant confirmed that it had received no responses.

## **The property and the works**

5. The property is a three storey, purpose built block of 12 flats, built in 1955. The named respondents are the tenants on long leaseholds who pay a service charge. The Applicant landlord is the London Borough of Barking and Dagenham. It is assumed that the other tenants hold under secure tenancies or other tenancies available to local authorities.
6. The Applicant relates that the property is one of six blocks that require refurbishment. Accordingly, the block was included in a major works programme to carry out a range of work, including re-roofing and fire prevention works.
7. The Applicant relates that complaints had been received about water ingress in the block. I have been provided with photographs that show

water staining, cracks and other damage, and apparent bowing of ceilings, as a result of the water ingress. As a result of these complaints, the Applicant decided to bring forward the major works in respect of replacement of the roof.

8. That has knock on effects. First, it is said to be necessary to undertake compartmentalisation works when replacing the roof. A fire risk assessment prepared by Savills in May 2022 shows that there is currently no compartmentalisation in the roof void. The assessment recommends the provision of appropriate compartmentalisation. The Applicant accordingly includes these works in the current dispensation application. It will evidently be cheaper, and more convenient, to do that, rather than require two sets of work to the roof/void.
9. Secondly, the property has asbestos soffits. Replacement of the soffits (and associated works) appears to have been part of the major works. The Applicant reports that the soffits would present a health hazard to contractors carrying out the roof works. Accordingly, they too should be replaced as part of the brought-forward work and, consequently, that replacement of the gutter (and, it appears from photographs supplied, downpipes) and fascia should also be carried out now.
10. The Applicant applied for dispensation because it was concerned that further water ingress would lead to ongoing damage to flats in the property. The Applicant states that “repairs are no longer a viable option”, which, I assume, is a reference to short-term spot repairs.
11. On the application form, the box indicating that the work was to be undertaken under a qualifying long term agreement has been ticked, as has that which indicates that the work had not started. However, a schedule of condition report included in the papers states, first, that two quotations for the work had been procured. Secondly, it now appears that work started in November 2022, after the application was submitted.
12. As to the cost of the work, the schedule of condition report states that the more competitive of the two quotations received was from an enterprise called TEB, because it included the asbestos removal work, unlike the other, from Adept. The tender analysis supplied is difficult to follow, however. It may be that it comprises a print out of a spread sheet onto A4 pages. In any event, the bundle includes letters sent to leaseholders dated 28 October 2022 headed “First tier Tribunal (Property Chamber) Application Relating to Roof Replacement and Associated Works”. In those letters, the total cost for the works is given as £312,063.

## **Determination**

13. The relevant statutory provisions are sections 20 and 20ZA of the Landlord and Tenant Act 1983, and the Service Charges (Consultation etc)(England) Regulations 2003. They may be consulted at the following URLs respectively:  
<https://www.legislation.gov.uk/ukpga/1985/70>  
<https://www.legislation.gov.uk/uksi/2003/1987/contents/made>
14. The Tribunal is concerned solely with an application under section 20ZA of the 1985 Act to dispense with the consultation requirements under section 20 and the regulations.
15. The original application urged the urgency of the work. The work was, in the event, started reasonably shortly after the submission of the application, and has presumably now been completed. Given that the occasion for the work being brought forward was the complaints of leaks causing damage to some of the flats, and the timing – the onset of winter – I accept that the works were urgent.
16. On the face of it, the decision to bring forward the planned major works to deal with the leaks was a rational and appropriate one. This observation is made in the context of an unopposed dispensation application, and should not be taken as binding in any way should the issue arising in subsequent proceedings.
17. But in any event, no response been received from any of the leaseholders objecting to the application. It is therefore clear that the leaseholders have not sought to claim any prejudice as a result of the consultation requirements not having been satisfied. Where that is the case, the Tribunal must, quite apart from any question of urgency, allow the application: *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854.
18. This application relates solely to the granting of dispensation. If the leaseholders consider the cost of the works to be excessive or the quality of the workmanship poor, or if costs sought to be recovered through the service charge are otherwise not reasonably incurred, then it is open to them to apply to the Tribunal for a determination of those issues under section 27A of the Landlord and Tenant Act 1985.

## **Rights of appeal**

19. 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 London regional office.

20. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
21. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
22. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

**Name:** Judge Prof Richard Percival      **Date:** 1 December 2023