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

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| **Case reference** | : | **LON/00AY/LDC/2024/0060** |
| **Property** | : | **8, 12, 12A, 14 & Flat 2, 16, Rollscourt Avenue, London, SE24 0EA** |
| **Applicant** | : | **The Mayor and Burgesses of the London Borough of Lambeth. Ref: HOS/LIT/PBYFIELD/612655** |
| **Representative** | : | **In house** |
| **Respondents** | : | **The leaseholders as per the application** |
| **Representative** | : | **Not represented** |
| **Type of application** | : | **Application for dispensation from the consultation requirements of s20 under section 20ZA of the Landlord and Tenant Act 1985** |
| **Tribunal member** | : | **Mr A Harris LLM FRICS FCIArb** |
| **Venue** | : | **10 Alfred Place, London WC1E 7LR** |
| **Date of decision** | : | **18 June 2024** |

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**DECISION**

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## Decision of the tribunal

1. The tribunal does not exercise its discretion to grant dispensation from the consultation requirements of s20ZA in respect of the works required to resurface the road.

## The application

2. The Applicant seeks dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") in respect of works to repair and resurface the estate car park and road area due to potholes and sustained damage. The Applicant council commenced a section 20 consultation process but due to human error the contractor commenced work prior to the consultation being completed. The council seeks dispensation from the consultation requirements.

3. Directions were made on 16 April 2024 for a paper determination in the week commencing 17 June 2024. The only issue for the tribunal is whether it is reasonable to dispense with the statutory consultation requirements.

4. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable**.

## The hearing

5. A written application was made by the Applicant Landlord, Lambeth Council under the leases of the flats in the block on 14 February 2024.

6. A specimen lease has been provided and the other leases are said to be in similar form . The case was decided on paper and no appearances were made. The tribunal considered the written application form, submissions made by the Applicant including copy letters to the leaseholders, and the estimates and the specimen lease included in the bundle.

## The background

7. The property forms part of the Rollscourt Avenue flats (the Estate) consisting of 11 mixed tenure flats of which 5 are leasehold. Each leaseholder flat is sold on long lease and each lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

8. An inspection was not requested and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues.

9. A specimen lease has been provided showing the scope of the works is within the service charge provisions of the lease. A list of leaseholders has been provided. The tribunal directed the applicant to provide copies of the application and directions to each lessee and to display the directions in the common entrance. Confirmation was sent to the tribunal that the application had been provided to all leaseholders and displayed as directed.

10. Representations have been received objecting to the application as to the scope of the works or appropriateness of the application. Mr Gannon of flat 12a states that leaseholders were not given the opportunity to nominate a contractor or comment on the scope of the works. The roadway was in reasonable condition but the access pathway was not and still has not been repaired. Human error is not an acceptable reason for a failure to consult.

11. Mr Platts-Mills of the flat 14 objects due to the size of the bill in the cost of living crisis. He does not agree that the original reason stated that the works were necessary to prevent slips trips and falls is correct. The resurfaced area was the drive and not the pavement.

12. Photographic evidence has been provided of the footpath.

13. Reasonableness and payability of the service charge is not within the scope of this application.

## The Law

## s20ZA of the Landlord and Tenant Act 1985

### Service charges

*20ZA Consultation requirements: supplementary*

*(1)Where an application is made to the appropriate 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.*

*(2)In section 20 and this section—*

*"qualifying works" means works on a building or any other premises, and*

*"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*

*(3)The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—*

*(a)if it is an agreement of a description prescribed by the regulations, or*

*(b)in any circumstances so prescribed.*

*(4)In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.*

*(5)Regulations under subsection (4) may in particular include provision requiring the landlord—*

*(a)to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,*

*(b)to obtain estimates for proposed works or agreements,*

*(c)to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,*

*(d)to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and*

*(e)to give reasons in prescribed circumstances for carrying out works or entering into agreements.*

*(5A)And in the case of works to which section 20D applies, regulations under subsection (4) may also include provision requiring the landlord—*

*(a)to give details of the steps taken or to be taken under section 20D(2),*

*(b)to give reasons about prescribed matters, and any other prescribed information, relating to the taking of such steps, and*

*(c)to have regard to observations made by tenants or the recognised tenants' association in relation to the taking of such steps.*

*(6)Regulations under section 20 or this section—*

*(a)may make provision generally or only in relation to specific cases, and*

*(b)may make different provision for different purposes.*

*(7)Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.*

14. The applicable case law is Daejan Investments Ltd v Benson [2013] UKSC 14, 1 WLR 854 where the Supreme Court held that the relevant test is whether the leaseholders have suffered prejudice by the failure to consult. 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.

## The tribunal's decision

15. The tribunal does not grant dispensation from the consultation requirements of under s20 ZA of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003

## Reasons for the tribunal's decision

16. The works said to be necessary to resurface the roadway and car parking area. A notice of intention was served on 19 July 2023. The contractors commenced work on 21 July 2023. Owing to an administrative error when a work order was commissioned, the work was not put on hold to allow for consultation process. The contractor was instructed to proceed.

17. The tribunal is not satisfied that the leaseholders were aware of the scope of the works commissioned or their cost before they commenced and on the basis of the photographs submitted it is more likely than not that representations would have been made to include the footways or possibly only the footways in the works. The objecting leaseholders also say that they are either in or know people in the construction industry who would have been interested in tendering for this work and they have had no opportunity to nominate a contractor. There is no evidence the works were urgent.

18. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs. (1) provides:

    "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*" (emphasis added).

19. The Tribunal understands that the purposes of the consultation requirements is to ensure that leaseholders are given the fullest possible opportunity to make observations about expenditure of money for which they will in part be liable. The test laid down by the Supreme Court in Daejan v Benson is whether the leaseholders would suffer prejudice if the application were to be granted and a full consultation not carried out.

20. The tribunal considers that there is prejudice to the leaseholders in in the failure to consult. The tribunal is not satisfied that an administrative error excuses any possible prejudice arising from a failure to carry out the full consultation process. The requirement to consult is not new and the council should have had in place an appropriate process for non-urgent works.

21. The tribunal therefore refuses dispensation..

22. Dispensation is not concerned with the cost and recoverability of service charges for the works which are dealt with under section 27A of the Act.

**Name:** A Harris **Date:** 18 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).