FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/LDC/2024/0074**
Property	**:**	**Charrington Tower, New Providence Wharf, London, E14 9AY**
Applicants	**:**	**Landor (Dundee Wharf) Limited & Blazecourt Limited**
Representative	**:**	**Ballymore Asset Management Limited**
Respondents	**:**	**The leaseholders listed in the application**
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	**:**	**19 June 2024**

DECISION

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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 works for the replacement of four pressurisation units ("PUs") and associated spill vessels, vacuum degassers and ancillaries forming part of the communal heating and hot water system installed in the plant room within the common parts of the property ("the works") known as Charrington Tower, New Providence Wharf, London, E14 9AY ("the property").

2. The property is comprised of a 43-storey block containing 360 private residential units under the name "Charrington Tower". An adjoining 12-storey block contains 18 private residential units under the name "Columbia West" and 116 affordable housing residential units under the name "Jessop Building", of which 39 are shared ownership and 77 are social housing and one commercial unit on the lower ground floor.

3. The relationship between the parties has helpfully been summarised in the Applicants' statement of case as follows.

4. Landor (Dundee Wharf) Limited, the First Applicant is the registered freehold proprietor of the property. It has granted leases of the 378 private residential units within the Building in similar form ("the Private Leases"). By way of seven intervening leases dated variously between June 2016 and April 2019 (the "Intervening Leases"), the 378 private residential units within the Building were demised by the First Applicant to Blazecourt Limited (the "Second Applicant").

5. By way of a headlease dated 24 February 2015 (the "HA Headlease"), the 116 affordable housing residential units along with certain common parts of the Building were demised by the First Applicant to Notting Hill Genesis ("NHG").

6. Therefore, to summarise:

   (a) under each Intervening Leases, the First Applicant is the landlord and the Second Applicant is the tenant; and
   (b) under each Private Leases, the Second Applicant is the landlord and the Leaseholders of the private residential units (the "Leaseholders") are the tenants; and
   (c) under the HA Headlease, the First Applicant is the landlord and NHG is the tenant.

7. It is the First Applicant, in its capacity as agent for the Second Applicant, which is the party responsible for commissioning those works and subsequently demanding service charges in respect of the cost of those works. This application is therefore made jointly by the First Applicant

and the Second Applicant to reflect the position as set out in the Intervening Leases.

8. Again, the Applicants have helpfully summarised their case in the following way:

   "The PU's were commissioned between March and November 2015. They have an operating lifespan of around 15 years according to CIBSE guidance. While the PUs have largely provided their intended functionality since the above date, periodically there have been below-satisfactory levels of reliability. To this point, the CIBSE guidance as to operating lifespan referred to above is an approximation and subject to many variables. It is inevitable for equipment such as the PUs to suffer increased failures beyond a certain age and/or level of usage, and the replacement of such equipment is a standard part of a development's capital expenditure investment. There are records of 31 system failures caused by the PUs dating back to 2019, which includes six outages in October 2023 alone".

9. A Notice of Intention was served by the Applicants on 24 November 2023 and the tender process started at the same time due to alleged urgent nature of the proposed works following the outages in October 2023. After obtaining 3 estimates, the Applicants instructed the contractor, Volmech, to carry out the works at an estimated cost of £267,514.60. The estimated total cost including contingency and supervision fees including VAT comes to a total of £318,788.23.

10. The proposed work dates are the first two units were due for delivery and works to begin in the week commencing 26 February 2024. The second two units were due for delivery and the works to begin in the week commencing 25 March 2024. The works were estimated to be completed by 3 May 2024. The Tribunal proceeds on the basis that the works have in fact been completed as planned.

11. The Applicants, therefore submit primarily that the PUs are no longer considered capable of ensuring the operation of the heating and hot water system at the Building, primarily on the basis of age and lack of reliability.

12. Other relevant factors are the faults have occurred outside the manufacturer's warranty period, the equipment is not easily accessible for repair leading to further outages, there is a scarcity of trained engineers and the proposed replacement system allows for remote monitoring and diagnosis thereby providing quicker and more effective repair and maintenance.

13. On 17 April 2024, the Tribunal issued Directions. The Respondents were directed to respond to the application stating whether they objected to it in any way.

14. Individually, two tenants responded to the application. They are Mr Adam Kramarzewski and Mr Ryan Hornsby. Neither objected in principle

to the proposed works being carried out. Instead, they both sought clarification about the estimated cost of the work. Mr Kramarzewski's complaint was that these works were being given priority over the faulty front door to the building.

15. Separately, the substantive objection came from New Providence Wharf Leaseholders and Residents Association ("NPWLRA") and 45 other leaseholders. The objection made by both is identical. As the Tribunal understands it, the overall objection is that the leaseholders have suffered prejudice in the increased estimated cost of works and the legal costs incurred by the Applicants in having to make this application.

16. As to the alleged increased cost, the Respondents argue that the heating and hot water system should have had a lifespan of 15-20 years and the completion of the building took place only in 2016. Furthermore, the system failures started to occur in early 2017 and, therefore, the Applicants should have then made a claim against the contractors and/or under any warranties. This would have prevented these additional costs to the leaseholders.

17. As to any legal costs incurred in making this application, the Respondents submit that the Applicants have had sufficient time between 8 January to 25 May 2024 to carry out consultation under section 20 of the Act.

Relevant Law

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

Decision

19. As directed, the Tribunal's determination "on the papers" took place on 19 June 2024 and was based solely on the documentary evidence filed by the parties.

20. 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.

21. 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.

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

    (a) importantly, there appears to be common ground between the parties that the proposed works were necessary because of the

multiple system failures in the PU's over many years. This is not specifically challenged by the Respondents. This, in turn, has undoubtedly led to a lack of provision of heating and/or hot water for the occupiers and the resultant significant loss of amenity to them. The Tribunal was, therefore, satisfied that it was incumbent on the Applicants to carry out the work, as the repairing obligations under the various leases required them to do sooner rather than later.

(b) The real objection made by the NPWLRA and other 45 leaseholders is the alleged prejudice in the tenants (a) being liable for the costs at all and/or the increased costs incurred by the Applicants failure to address the works sooner (b) any legal costs that the Applicant may seek to recover from the Respondents in making this application.

(c) As the Tribunal made clear in the directions, this application is not concerned with the estimated or actual cost of the works *per se*. If the Respondents are correct in their arguments that this cost should not fall on them or was increased by delay on the part of the Applicants, it is open to them to make an application to the Tribunal under section 27A of the Act for a determination of this point if and when those costs are demanded by the Applicants.

(d) Similarly, if the Applicants seek to recover the costs of this application from the Respondents either through the service charge account or as an administration charge, they can make an application under section 20C of the Act and/or under paragraph 5A in Schedule 11 of the Commonhold and Leasehold Reform Act 2002. These statutory protections that tenants have in relation to a claim for such costs by a landlord.

(e) As to the allegation that the Applicants had sufficient time to carry out statutory consultation, the obvious point is that, even if they had done so, it would not have altered the stance taken by the NPWLRA and other 45 leaseholders in this application. Therefore, this application would have been necessary in any event.

23. 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:** 19 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.