FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AT/LDC/2024/0147**
Applicant	**:**	**Riverside Mill House RTM Company Limited**
Representative	**:**	**Eszter Safrany of Warwick Estates**
Respondents	**:**	**Leaseholders of Riverside Mill House**
Property	**:**	**1-19 Riverside Mill House, 20 Church Street, Isleworth, TW7 6XB**
Tribunal	**:**	**Judge Timothy Cowen** **Ms Alison Flynn MA MRICS**
Date of decision	**:**	**24 September 2024**

SUBSTANTIVE DECISION

Decision of the tribunal

IT IS ORDERED THAT

Unconditional dispensation is granted in respect of the works which are the subject of the application.

REASONS FOR DECISION

1. This is an application by the Applicant RTM Company under section 20ZA of the Landlord and Tenant Act 1985 to dispense with the consultation requirements under section 20 of that Act.

2. The application was made on 3 June 2024. The Property consists of two purpose built blocks containing 19 flats. The Landlord is Southern Land Securities Limited.

3. The application is in respect of work to replace the foul pump which services all the flats. The pump had failed as a result of which sewage was leaking

into the car park of the Property. This resulted in a health and safety emergency. The works were done in August 2023. The cost of the works was £11,448 including VAT. The Applicant obtained three quotes which were almost identical in amount:

Certified Drain Services	£11,448.00 inc VAT	03.11.2022
Deckpro	£11,448.35 inc VAT	
Direct Pumps	£11,726.40	

4. They chose the cheapest quote, Certified Drain Services. According to the Applicant, any works which cost more than £3,560 in this Property would trigger the section 20 consultation requirements.

5. Before the pump failed, the Applicant knew that the pump needed replacement and served section 20 notices of intention on 22 February 2023. The pump failed before the next round of consultation notices (including estimates) could be served. The Applicant therefore did the works on an emergency basis and are now seeking dispensation. The Applicant kept the leaseholders informed of developments throughout the process.

6. The only issue for the tribunal is whether it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs are recoverable or payable.

7. Directions for the application were given by the Tribunal on 17 July 2024. The directions ordered that the application be served on all of the leaseholders and posted up in the common parts by 31 July 2024 and gave the leaseholders an opportunity to send objections to the application and to make a statement in response by 14 August 2024.

8. In the bundle, there is an email from the Applicant confirming that they served and posted up the application. The bundle also contains a statement that no responses have been received from leaseholders. As far as we can see, no communications have been sent to the Tribunal by any of the leaseholders.

9. The directions further ordered that the application be decided on paper without a hearing in the week commencing 23 September 2024, unless any party requested a hearing. No party has requested a hearing and this therefore is the decision of the Tribunal after considering the matter on paper without a hearing.

10. We must consider whether to grant dispensation. The relevant statutory provisions are found in subsection 20ZA (1) of the 1985 Act under heading "Consultation Requirements: Supplementary". That subsection reads as follows: *"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 it is reasonable to dispense with the requirements".*

11. In the light of the decision of the Supreme Court in *Daejan Investments v Benson* [2013] UKSC 14, the Tribunal must consider whether dispensation would cause prejudice to the leaseholders. The burden of identifying relevant prejudice falls on the leaseholders who are seeking to resist the application. Furthermore, the decision in *Daejan* made it clear that the purpose of the statutory consultation requirements was to ensure (a) that the leaseholders were protected from paying for inappropriate works and (b) from paying more than was appropriate.

12. In our judgment, there is no evidence of prejudice for the purposes of section 20ZA of the 1985 Act. The works seem on their face to be appropriate and there is no-one who says otherwise.

13. We have also taken into account the following facts, which we find:

    - the work needed to be carried out urgently, because of the risk of unsanitary leaking of sewage
    - the Applicant commenced the consultation procedure, so the leaseholders were aware of the need for the works in advance and have had some opportunity to respond
    - despite the emergency, the Applicant had already managed to get three quotes for the work and picked the cheapest quote. It is not easy to see how a process of consultation with the leaseholders could have achieved a significantly different result
    - The works were completed over a year ago and there is no indication of further problems with the pump.

14. In the circumstances, we are satisfied that the leaseholders would not be prejudiced by the dispensation requested.

15. For all of the above reasons we conclude that it is appropriate to exercise the discretion conferred by section 20ZA of the 1985 Act by dispensing with the consultation requirements in relation to the proposed works. We have considered whether any it would be appropriate to impose any conditions. The leaseholders have not incurred any costs in these proceedings and we have not identified any prejudice which could be remedied by the imposition of conditions. We therefore give dispensation without conditions.

16. For all the above reasons, we have made the order set out above.

Name: Judge T Cowen **Date:** 24 September 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).

31.07.24	Deadline for sending everything to leaseholders
03.08.24	Confirmation to tribunal
14.08.24	Opposition
28.08.24	L's bundle