FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AC/LDC/2024/0007**
Applicant/Landlord	**:**	**Southern Land Securities Ltd**
Representatives	**:**	**Junique Lawrence and Karen Young of Together Property Management Ltd, the managing agents**
Respondents/ Lessees	**:**	**Claire Caminade; Sebastian Zyrko and Monika Grygier-Zyrko, Naomi Bullock, Alexanders Ltd**
Representatives		**Claire Caminade and Naomi Bullock on behalf of themselves and Sebastrian Zyrko and Monika Grygier-Zyrko; Alexanders Ltd not appearing**
Property	**:**	**216-218a Sydney Road, Muswell Hill, London N10 2RS**
Tribunal	**:**	**Judge Adrian Jack, Tribunal Member Kevin Ridgeway MRICS**
Date of decision	**:**	**15th July 2024**

DECISION

Background and procedural

1. This application concerns a purpose-built block of four flats built in 1935. The leases date for the 1990's and contain standard service charge provisions. The four flats each contribute one quarter to the service charges.

2. By an application dated 9th January 2024 the applicant landlord applies for dispensation pursuant to section 20ZA of the Landlord and Tenant Act 1985 from the requirements in section 20 of that Act to consult tenants in respect of major works.

3. The landlord said in its application:

> "We were contacted by one of the leaseholders at the above property to advise of a leak under the property from the mains

> water supply. Upon an attempt to repair the leaking pipe it was noted that the pipe was lead which caused further issues as the pipe then collapsed during repairs meaning a section needed to be replaced in order to stop the leak and reinstate the water to the building. Following these repairs we then had to carry out works to then replace the water mains to all 4 flats in the building to replace the lead pipes… No Section 20's have been sent to the Leaseholders as works were carried out as an emergency."

4. As was established at the hearing of this matter, dispensation is in fact sought in respect of two separate sets of major works. The first set of works resulted from an attempt to fix a leak on 29th March 2023. In the course of the works the lead pipe carrying the mains water was damaged resulting in the water supply to the property being cut off for forty-eight hours. The second set of works involved the replacement of the old lead mains water pipes with new. These were carried out between 15th August 2023 and 19th December 2023 at a cost of £8,700 (including VAT).

5. The Tribunal gave directions on 4th February 2024 and these were substantially complied with.

The law

6. Section 20 of the Landlord and Tenant Act 1985 requires landlord intending to carry out major works to consult with their tenants on pain of the landlord's recovery against an individual flat-owner being limited to £250. Section 20ZA permits this Tribunal to "dispense with all or any of the consultation requirements… [T]he tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

7. The proper approach to be adopted by the Tribunal in determining such applications was discussed by the Supreme Court in *Daejan Investments Ltd v Benson* [2013] UKSC 14, [2013] 1 WLR 854, which held (reading from the headnote):

> "that the purpose of a landlord's obligation to consult tenants in advance of qualifying works…. was to ensure that tenants were protected from paying for inappropriate works or from paying more than would be appropriate; that adherence to those requirements was not an end in itself, nor was the dispensing jurisdiction under section 20ZA(1) of the 1985 Act a punitive or exemplary exercise; that, therefore, on a landlord's application for dispensation under section 20ZA(1) the question for the leasehold valuation tribunal was the extent, if any, to which the tenants had been prejudiced in either of those respects by the landlord's failure to comply; that neither the gravity of the landlord's failure to comply nor the degree of its culpability nor its nature nor the financial consequences for the landlord of failure to obtain dispensation was a relevant consideration for the tribunal; that the tribunal could grant a dispensation on such terms as it thought fit, provided that they were appropriate in their nature and effect,

> including terms as to costs; that the factual burden lay on the tenants to identify any prejudice which they claimed they would not have suffered had the consultation requirements been fully complied with but would suffer if an unconditional dispensation were granted; [and] that once a credible case for prejudice had been shown the tribunal would look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice."

The first set of major works

8. In May 2022 a tenant complained about a leak. The managing agents instructed MT Drains to investigate. On 18th May 2022 they reported:

> "Attended site for leaking pipe in the front garden. Dug and exposed pipe, I turned the water on to find its coming from under the house. This needs to be safely excavated and exposed by building contractor as we wouldn't know how much wall we can safely open up without issues. We are unable to see what the pipe is that is leaking within the wall. The parts required are still unknown."

9. This report does not say that the pipe concerned was a lead pipe. The leak was only a small leak and it took the managing agents nearly a year to instruct further works. These were done by Orbis Veritas. Originally fixing the leak was expected to be reasonably cheap, so no question of consultation arose.

10. Unfortunately during the course of the works, Orbis Veritas caused the lead pipe to split. This necessitated the turning off of the mains water, so that the tenants were without water for forty-eight hours. The managing agents instructed that works be done urgently to restore the water supply. The cost of the works as expanded to including fixing the splitting of the pipe exceeds £250 per flat.

11. We remind ourselves that no question of the responsibility for the splitting of the pipe is before us. Nor is any question as to the reasonableness of the sums claimed by Orbis Veritas for their works, or whether the costs would stand to be reduced to reflect the way in which the damage was caused. The sole issue for us in this application is whether the landlord should be relieved of its obligation to consult.

12. In our judgment this was a straightforward emergency situation. The tenants complain that the landlord delayed nearly a year before taking steps to fix the leak, which had been identified. This is true, but in our judgment it is irrelevant. The emergency was caused by splitting of the lead pipe, which could not reasonably have been foreseen. This is a classic case for granting dispensation from the consultation requirements. The landlord had to act to restore the water supply to the tenants. Delaying in order to carry out a consultation would have been wholly inappropriate.

13. Accordingly we grant unconditional dispensation in respect of the first set of works.

The second set of works

14. After the discovery of the lead piping, the managing agents instructed a firm called Thomson to test the water at the property. This they did. Although the water did contain some lead, it was (they found) within the limits of safe consumption for humans. In their report of 28th April 2023, they said:

> "At this stage we would recommend continuing to monitor and test for lead to ensure the levels don't rise, and ultimately looking to remove all the lead piping from the system."

15. After the discovery of the lead piping, the managing agents communicated with the tenants. On 3rd April 2023, Ms Bullock, one of the tenants, wrote to the agents (with copies to some others of the tenants) raising her concerns. She had only recently bought her flat and wrote that the lead piping "is a significant health and safety issue that I'm sure you will be urgently trying to rectify." It appears that Ms Lawrence, of the managing agents, took this as a consent by all the tenants to the carrying out of the second set of works.

16. We do not agree. This email was sent before the Thomson report of 28th April 2023 was available with the reassurance given by that report as to the safety of the water, which was reinforced by lead readings obtained on 18th May 2023. This alone was enough to vitiate any consent given. Further, the agents made no attempt to obtain the views of the other tenants, or to confirm that Ms Bullock's views continued following this development.

17. In our judgment there was sufficient time to carry out a consultation. This was not an emergency situation.

18. The question then becomes: what prejudice have the tenants suffered by the landlord's failure to consult? Ms Caminade said that the agents never told the tenants that they would have to pay something and she did not believe she would be called upon to pay, so it was unjust to allow them now to raise service charge demands. We do not accept that the tenants can have reasonably thought any such thing. The agents were sending details of the works to be carried out. A reasonable tenant would assume that the agents were doing that in order to keep them abreast of the services for which they would in due course have to pay. We reject this head of prejudice.

19. Ms Bullock submitted that another tenant in the block, who was an air conditioning specialist, could have put forward a contractor who might have been able to do the work cheaper. In our judgment this is wholly speculative. We have no evidence from the air conditioning specialist, or any quotes from potential contractors. The tenants do not raise a

sufficient evidential case for the landlord to have to answer as required by *Daejan*. We reject this ground of prejudice.

20. This leaves the last matter relied upon by the tenants. If even just a stage one consultation had been carried out, they would have sought to have the works postponed. This in our judgment has some force. The Thomson report, it will be recalled, said that in their view the parties were "*ultimately* looking to remove all the lead piping" (our emphasis). There was no urgency to the works in Thomson's view.

21. If there had been a proper consultation the tenants would have wished for the works to be delayed. This would allow more time for the costs to be raised, so there was not an immediate imposition on the tenants. We bear in mind, however, that a consequence of delay would be that there would be a need for continuing lead testing of the water and there were ongoing risks of the lead piping failing. These considerations might have a depressive effect if any of the tenants sought to sell their flat. However, a delay of five years or so would be perfectly sensible.

22. In our judgment, this is relevant prejudice which should be met by imposing conditions on our grant of section 20ZA relief. When we stand back and look at the financial implications of the tenants paying now instead of building up a fund over, say, five years, there would have been some financial benefit to the tenants. On the other hand, they would ultimately have to pay much the same sort of figure in real money terms as the landlord currently seeks, albeit spread over a longer period.

23. Doing our best, in our judgment the financial prejudice can be met by imposing a condition on the section 20ZA relief that the tenants only pay 75 per cent of the sums otherwise payable in respect of the second set of works.

Costs

24. The only costs we are asked to determine are the fees payable to the Tribunal comprising the £100 application fee and the £200 hearing fee. The Tribunal has a discretion as to these. The starting point is that the landlord should bear this cost, however, the landlord has had complete success in relation to the first set of works and the reduction in relation to the second set of works is only 25 per cent.

25. In our judgment, these are not sufficient to alter the starting point. We bear in mind that the managing agents' communication with the tenants has been generally poor. We have found some prejudice (and the second set of works are much more expensive than the first set). Accordingly we make no order for costs relation to the fees payable to the Tribunal.

DECISION

(a) The Tribunal gives an unconditional dispensation from the consultation requirements of section 20 of the Landlord and Tenant Act 1985 in respect of the first set of works.

(b) The Tribunal gives a dispensation from the said consultation requirements in respect of the second set of works, conditional on the landlord recovering only 75 per cent of the sums otherwise recoverable in respect of the said second set of works.

(c) The Tribunal makes no order for costs in respect of the fees paid to the Tribunal.

Signed: Adrian Jack **Dated:** 15th July 2024

SCHEDULE: THE STATUTORY PROVISIONS

Landlord and Tenant Act 1985

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 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.**]**

The Service Charges (Consultation Requirements) (England) Regulations 2003

SCHEDULE 4 PART 2

CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS FOR WHICH PUBLIC NOTICE IS NOT REQUIRED

Notice of intention

1.—(1) The landlord shall give notice in writing of his intention to carry out qualifying works—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

2.—(1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

3. Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

4.—(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations

received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ('the paragraph (b) statement') setting out—

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)—

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

6.—(1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—

(a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and

(b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.