FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AC/LDC/2024/0136**
Property	**:**	**Flat 8, 790 High Road, Finchley, London, N12 9QR**
Applicant	**:**	**Jermyn Street Properties Limited**
Representative	**:**	**Universal Properties Limited, Managing Agent**
Respondents	**:**	**Anthony Baignet**
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	**:**	**30 September 2024**

DECISION

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 roof repairs at the property known as 790 High Road, Finchley, London, N12 9QR ("the property").

2. The Applicant is the freeholder and landlord of the property and the Respondent is the long leaseholder of Flat 8. The Applicant's apppointed managing agent is Universal Properties Limited ("UPL").

3. The property is described as being a mixed use purpose built block comprised of 8 residential flats and commercial premises on the ground floor. The Respondent's flat forms an annex away from the main building and shares the flat roof on the first floor with the commercial premises.

4. It is the Applicant's case that in November 2022 UPL instructed a roofing contractor, S L Whiterose Limited, to carry out a survey of the first floor flat roof following a water leak to the commercial premises on 8 November 2022. On 16 November 2022, UPL served a section 20 Notice of Intention on the leaseholders of the residential flats and the commercial premises setting out the proposed emergency roof works and the estimated cost.

5. Following completion of the works, the Respondent disputed his apportionment of the service charge costs for the roof repairs. Apparently, court proceedings failed to resolve the issue. UPL then appointed a Surveyor to resolve the apportionment issue.

6. On 29 January 2024, the Respondent informed UPL that he would not pay a contribution greater than £250 because the Applicant had not applied for dispensation from the requirement to carry out statutory consultation under section 20 of the Act. The Respondent's service charge contribution is placed at £3,263.10. It should be noted that the Tribunal is not concerned with issues about the necessity, scope and the amount of the Respondent's service charge contribution in this application because it does not have jurisdiction to do so. As the Tribunal's directions make clear, the only issue for the Tribunal to decide is whether retrospective dispensation should be granted in respect of the roof works carried out in 2022.

7. On 19 July 2024, the Tribunal issued Directions. The leaseholders including the Respondent were directed to respond to the application stating whether they objected to it in any way. Only the Respondent served a statement on 13 August 2024 objecting to the application, which the Tribunal has considered and is dealt with below.

Relevant Law

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

Decision

9. As directed, the Tribunal's determination "on the papers" took place on 30 September 2024 and was based solely on the documentary evidence filed by the parties.

Respondent's Objections

10. The Tribunal was satisfied that this application was made on behalf of the Applicant freeholder by UPL as its managing agent, which it is entitled to do. It is not procedurally incorrect.

11. The Tribunal cannot decide the issue of ownership of the flat roof or whether it forms part of his demise in this application because, as stated earlier, it does not have jurisdiction to do so. If the Respondent wishes to dispute this and the extent of his service charge liability for the cost of the roof repairs, then he must make an application under section 27A of the Act for this determination to be made. The Tribunal proceeds on the assumption that his lease creates such a liability and it notes that the Respondent is seeking to limit his liability to £250.

12. Despite the delay in making this application, there is no time limit for the Applicant to do so nor does this affect the merits of the application.

13. The Tribunal repeats its comments at paragraph 11 above in relation to whether or not a roof survey was carried out and whether this was disclosed to the leaseholders. On balance, the Tribunal accepted from the photographic evidence provided that the nature and extent of the water ingress revealed an urgent basis for the roof repairs.

14. As to the Respondent's allegation that the roof repairs became urgent because of historic neglect, the Tribunal repeats its comments at paragraph 11 above.

15. It is common ground that the Respondent was not given an opportunity to make observations about the proposed roof works. The observations he now seeks to make about the scope of the work, the failure to provide him with a copy of the survey and the nominated contractor as not relevant considerations for the reasons set out below. Potentially, they may form the basis of arguments made in a section 27A application.

16. 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.

17. 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 remedial roof works. As stated

earlier, the Tribunal is not concerned about the actual cost that has been incurred.

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

    (a) From the evidence filed by the Applicant, the Tribunal was satisfied that any delay incurred by it in having to carry out statutory consultation would inevitably have resulted in further significant loss of amenity to the affected leaseholders and possibly resulted in greater overall remedial cost to them because of further deterioration in the fabric of the building. The Tribunal made no finding about the issues raised by the Respondent by way of objection to this application.

    (b) at all material times, the Tribunal was satisfied that the leaseholders have been kept informed of the need, scope and estimated cost of the proposed works.

    (c) importantly, any real prejudice to the Respondent or other leaseholders would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred by making a separate service charge application under section 27A of the Act.

19. 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:**	30 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).

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.