FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LDC/2024/0182**
Property	**:**	**93A-F Vassall Road, London, SW9 6NH**
Applicant	**:**	**The Mayor & Burgesses of the London Borough of Lambeth**
Representative	**:**	**Mr. P. Byfield**
Respondents	**:**	**The leaseholders of the property as per list attached to application**
Representative	**:**	**None**
Type of application	**:**	**To dispense with the statutory consultation requirements under section 20ZA Landlord and Tenant Act 1985**
Tribunal member	**:**	**Judge Sarah McKeown**
Date of decision	**:**	**12 November 2024**

DECISION

This has been a remote hearing on the papers. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper. The documents to which the Tribunal was referred are in an electronic bundle of 60 pages, the contents of which the Tribunal has noted. The decision made is as set out below.

DECISION

The Tribunal grants the application for retrospective dispensation from statutory consultation in respect of works to the hot water and heating system and as set out in the quote (number TBG3869) dated 31 May 2024 as attached to the application.

This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonableness and/or cost of the qualifying long-term agreement.

The Applicant must serve a copy of this decision on all Respondents and display a copy of this decision in a prominent place in the common parts of the Building in which the Respondent's properties are situate.

The Application

References are to page numbers in the bundle provided for the hearing.

1. The building in which 93A-F Vassall Road, London, SW9 6NH are situate ("the Building") is a mixed-tenure three-floor conversion property which comprises 6 flats. Three of those flats are leasehold: 93A, 93D and 93E – the leaseholders of those flats are the Respondents.

2. The Applicant seeks (p.1) a determination pursuant to section 20ZA of the Landlord and tenant Act 1985 ("the Act") for retrospective dispensation from consultation in respect of the works set out below. The cost of the works was estimated to be £6,569.90 plus VAT (i.e. £7,883.88). The works were:
(a) conversion of old cylinder and tank to direct DHW HIU;
(b) conversion of cold water down service from mains to old tank;
(c) Black drain down to supply and 5 radiators with commercial-rated Herz TRV's and lockshields, including pipework fittings;
(d) refill, vent and test upon completion;
(e) clear rubbish from site.

3. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if the landlord plans to carry out qualifying works or enter into a qualifying long-term agreement which would result in the contribution of any tenant being more than £250. The cost which is the subject of the application exceeds this threshold.

4. By directions (p.51) dated 27 September 2024 ('the directions") the Tribunal directed that the Applicant had to send to each of the leaseholders (and any residential sublessees and any recognised residents' associations), by 23 August 2024, by email, hand delivery or first-class post:

   (a) Copies of the application form;
   (b) The directions.

5. The Applicant also had to display a copy of the directions in a prominent place in the common parts of the Building.

6. The directions provided that leaseholders who oppose the application had to, by 11 October 2024, complete the reply form and sent to the Applicant and the Tribunal and sent to the Applicant a statement in response with copies of any documents they wished to rely upon. There was also provision for a response from the Applicant.

7. The Applicant confirmed, in an email dated 18 September 2024, that the directions and the required documents had been sent to the Respondents by first-class mail and the same had been placed on display in a prominent place within the Building.

8. The Tribunal has not received a completed form from any leaseholder or sublessee.

9. The directions provided that the Tribunal would decide the matter on the basis of written submissions unless any party requested a hearing. No such request has been made.

The Applicant's case

10. The Applicant is the freeholder (p.33) of the Building.

11. The Applicant's Submissions (which are attached to the application) state that the sole reason for the Applicant's inability to comply with the relevant consultation requirements was due to the urgent nature of the works. It is said that the Respondent would not be: (i) contributing towards inappropriate works; (ii) contributing more than would be appropriate. It states that the Respondent will ultimately be liable for a proportion of the re-chargeable block cost, recoverable as service charges under their respective leases.

12. The Applicant was notified of an urgent matter on 24 April 2024. A non-leaseholder resident of the Building contacted the Applicant to inform them of low pressure on the hot water supply and a lack of control to the communal heating to their flat. A works order was raised for the Applicant's qualifying long-term contractor (T Brown Group Ltd – "the Contractor) to attend, which they did in May 2024. They found that the existing pipework, radiators and radiator valves were in poor condition and not up to regulations, and there was low pressure to the hot water supply. The Contractor quoted the sum of £6,569.90 plus VAT for the works set out above (p.17).

13. A Justification Report dated 5 June 2024 (p.20) was produced, explaining that a temporary fix to allow for full consultation was not possible, due to the risk that low hot water pressure and the possibility of outage posed to residents. It is said that a reliable hot water supply was necessary for the health, safety and wellbeing of residents, for reasons of hygiene and sanitation, and as inconsistency of supply can compromise the functionality of heating systems.

14. The external work order was approved on 29 April 2024 and the works were internally approved by the team responsible for void properties in mid-May 2024. This approval was necessary as the affected property had been vacant prior to the arrival of the new tenant. The course of works had been affected by an unexpected and ongoing delay since this stage, as the resident of the affected property continued to refuse access.

15. The works were to be carried out by the Contractor under a qualifying long-term agreement. It is said that the Respondents are aware of the cost of the total works and the Applicant has written to all leaseholders on 2 July 2024 (p.27) explaining why the works are required, what their estimated contribution was expected to be and that the Applicant would be making an application for retrospective dispensation. The Applicant also provided a "FAQ" sheet (p.29) which addresses some of the questions they may have.

16. It is said that there is no prejudice to the Respondents and the Applicant then addresses the issues set out in *Deajan Investments Ltd* (see below).

17. By clause 3.5 of the sample lease (p.33), the Applicant covenanted to maintain, repair and keep in good order and condition, among other things, any water tank which did not exclusively served the premises demised and the service and other pipes appurtenant thereto in good repair and condition. By clause 3.7, the Applicant covenanted to keep all conduits laid at the time of the grant or thereafter to be laid in or upon the building of which the demised premises formed part or any part thereof (other than those serving exclusively individual flats) in good repair and condition.

The Respondent's case

18. No Respondent objected to the application.

The Law

19. Section 20ZA of the Act, subsection (1) provides:
"Where an application is made to a 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".

20. The Supreme Court in the case of *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of section 19 to 20ZA of the Act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate, went on to state *"it seems to me that the issue on which the [tribunal] should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements".*

Determination and Reasons

21. The whole purpose of section 20ZA is to permit a landlord to dispense with the consultation requirements of section 20 of the Act if the tribunal is satisfied that it is reasonable for them to be dispensed with. Such an application may be made retrospectively, as it has been made here.

22. The Tribunal has taken account of the decision in *Daejan Investments Ltd v Benson and Others* in reaching its decision.

23. The works were urgent and the Respondents have been informed of the need for the works and the proposed cost as set out above. There is no evidence before the Tribunal that the Respondents were prejudiced by the failure of the Applicant to comply with the consultation requirements.

24. The Tribunal is therefore satisfied that it is reasonable to grant unconditional retrospective dispensation from the consultation requirements of s.20 Landlord and Tenant Act 1985 in regard to the works set out herein.

25. The Tribunal make no determination as to whether the cost of the works are reasonable or payable. If any leaseholder wishes to challenge the reasonableness of the costs, then a separate application under s.27A Landlord and Tenant Act 1985 should be made.

26. It is the responsibility of the Applicant to serve a copy of this decision on all Respondents and to display a copy of this decision in a prominent place in the common parts of the Building.

Judge Sarah McKeown
12 November 2024

Rights of appeal

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).