FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AM/LDC/2024/0288**
Property	**:**	**73 Chatsworth Road, London E5 0LH**
Applicant	**:**	**Mr T Stern**
Representative	**:**	**Seaboard Consulting Ltd**
Respondents	**:**	**Ms Sarah Shore (leaseholder of 73b)**
Representative	**:**	**n/a**
Type of application	**:**	**For dispensation from the statutory consultation requirements under section 20ZA Landlord and Tenant Act 1985.**
Tribunal	**:**	**Judge N O'Brien, Ms L Crane MCIEH**
Date of decision	**:**	**26 November 2024**

DECISION

Decisions of the tribunal

1. The Tribunal grants the application for retrospective dispensation from the statutory consultation requirements in respect of the subject works namely emergency repair works to the upper exterior of the building more particularly described in the application and referred to in this determination as 'the ad hoc works'.

2. This dispensation is granted on condition that the Applicant bears its own costs of this application and pays the Respondent's reasonable costs of resisting the application for dispensation, if any.

The Application

3. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant act 1985 (LTA 1985) for dispensation from the consultation requirements in respect of works to the subject premises. The premises consist of a converted Victorian building with commercial premises on the ground floor and a number of residential flats in the basement and upper floors. The Respondent holds a 99-year lease of the Flat B which is situated on the Second and First Floor of the building. The works are described in the application as emergency repair works to brickwork at the top of the building. The works were carried out in or about September 2022. The Applicant's case is essentially that it did not comply with the consultation requirements due to the urgency of the works, as bits of masonry had fallen off the roof of the building into the street below.

4. By directions dated 12 September 2024 the Tribunal directed that the Applicant should, by 26 September 2024, send to the leaseholders and the residential sub-lessees and any recognised tenants association the application and the directions and affix them to a prominent place in the common parts of the property, and confirm to the Tribunal that this had been done by 30 September 2024. The Applicant confirmed by email sent on 6 October 2024 that those directions had been complied with.

5. The directions provided that if any leaseholder or sublessee objected to the application, he or she should inform the Applicant and the Tribunal by 14th of October 2024, with any reply to be filed and served by 17 October. The Tribunal received an objection to the application from the Respondent.

6. The directions provided that the Tribunal would decide the matter on the basis of written representations unless any party requested a hearing. Neither party has requested a hearing

Mr Stern's Application pursuant to s27A

5 By an application dated 5 June 2024 (LON/00AM/LSC/2024/0246) the Applicant in these proceedings applied to this Tribunal for a determination as to the payability and reasonableness of a number of service charges including the service charges which are the subject of this application. The matter was heard on 18 November 2024 and a determination was issued to the parties on 25 November 2024. The Tribunal in those proceedings determined that the sum claimed for the works which form the subject matter of these proceedings (referred to in that determination and in this one as the 'ad hoc' works) was recoverable as a service charge and reasonable and recoverable in full, subject to the decision of this Tribunal in respect of the application for dispensation from the statutory consultation requirements.

The Respondent's Application

7. By an application sent to the Tribunal in 2023 Miss Shore applied for a declaration that the Respondent and a Cipora Stern had failed to comply with the statutory consultation requirements in relation to works which followed on from the ad hoc works (Case ref LON/00AM/LSC/2023/0482). These works related to structural works to the exterior of the building and to upgrading works to the internal common parts (the additional works). It seems that the need for the additional works became apparent after the ad hoc works were completed in 2022. The Applicant (Landlord) sent a notice of intention to Ms Shore on 11 November 2022 but it appears that no further steps were taken to either complete the statutory consultation process or to undertake the additional works. The Tribunal dismissed Ms Shore's application in a decision dated 12 June 2024 on the grounds that it did not have the power to grant Ms Stone the remedy she was seeking. The Tribunal ordered the Respondent and the other named respondent to pay the Applicant's fees due to their failure to engage with Ms Shore's application, leaving her unsure as to their intentions as regards the works.

8. **This determination relates to the ad hoc works only and does not concern the additional works or any other works.**

Legal Framework

7. The Service Charges (Consultation Requirements)(England) Regulations 2003 set out the consultation process which a landlord must follow in respect of works which will result in any leaseholder contributing more than £250 towards the cost. In summary they require the Landlord to follow a three-stage process before commencing the works. Firstly the Landlord must send each leaseholder a notice of intention to carry out the works and give the leaseholders 30 days to respond. Then the Landlord must send out details of any estimates and permit a further 30-day period for observations. Then, if the landlord does not contract with a contractor nominated by the leaseholders or does not contract with the contractor who has supplied the lowest estimate, it must service notice explaining why.

8. Section 20ZA of the LTA 1985 provides:

> "*Where an application is made to the appropriate tribunal for a determination to dispense with any or all 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".*

9. In *Dejan Investments Ltd v Benson and others [2013] UKSC 14* the Supreme Court held that in any application for dispensation under

s20ZA of LTA 1985 the Tribunal should focus on the extent, if any , to which the leaseholders are or would be prejudiced by either paying for inappropriate works or paying more than would be reasonable as a result of the failure by the landlord to comply with the Regulations. The gravity of the landlord's failing or the reasonableness of its actions are only relevant insofar as they are shown to have caused such prejudice. The evidential burden of identifying relevant prejudice lies on the tenants but once they have raised a credible case of prejudice, the burden is then on the landlord/applicant to rebut it.

The Applicant's Case

10. The Applicant's case is sparsely put and is limited to what is said in the application. He has failed to file any bundle in accordance with the directions. We have had sight of the bundle filed in case ref LON/00AM/LSC/2024/0246 and have considered the Tribunal's decision dated 25 November 2024. We note that the Tribunal determined that the sums sought in respect of the ad hoc works were payable and reasonable and were recoverable in full as a service charge subject to dispensation being granted in these proceedings.

11. In essence the Applicant's case is that dispensation should be granted because the works were urgent due to the danger to members of the public of falling masonry.

Response from the Respondent

12. The Respondent objects to dispensation being granted. She has filed a witness statement and a skeleton argument. She objects on the grounds that the Respondent delayed for nearly 2 years before applying for dispensation. It delayed over 1 year before making any demand. She was not informed that the works had been undertaken until after they were completed. She notes she was not supplied with any of the relevant invoices until shortly before the hearing on 18 November 2024, despite requesting the same on several occasions. Having now had copies of the invoices she notes that she has been unable to trace the building company which carried out the ad hoc works. She notes that the scaffolding was in place for far longer than the time the works took to complete. However, she has not supplied any alternative quotes for the works undertaken or for the scaffolding.

The Tribunal's decision

13. The Tribunal determines that it will grant dispensation in relation to the ad hoc works. The Tribunal does not consider that the Respondent has established that she has been prejudiced by the Applicant's decision not to follow the s.20 consultation process in respect of the ad hoc works. The Tribunal acknowledges that any effort to establish prejudice

which she might have made may have been hampered by the fact that the Applicant did not send copies of the invoices when requested. However, in our view the works had to be carried out quickly given the danger posed by the falling masonry. It seems unlikely that the Respondent could realistically have supplied a lower quote in a reasonable time.

14. Further we note that the Tribunal in LON/00AM/LSC/2024/0246 has already determined that the costs were reasonably incurred and reasonable in amount. Consequently, it does not seem that the Respondent has been financially prejudiced in any way by the lack of consultation.

15. However, we make the grant of dispensation subject to the Landlord/Applicant bearing his own costs of this application and paying the legal costs of the Respondent of responding to it, insofar as she may have incurred any. In our view the Applicant has behaved poorly in these proceedings by failing for two years to make this application when it should have been obvious that they needed to, and to supply the applicant with copies of the invoices in respect of the ad hoc works and by failing to supply the Respondent and the Tribunal with a proper bundle.

16. The Applicant is reminded that, as stated in the directions, it is the responsibility of the Applicant to serve a copy of this decision on all the affected lessees.

Name: Judge N O'Brien **Date:** 26 November 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).