



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00AK/LDC/2024/0212**

Property : **Flats 1-24 The Oaks, 8 Bycullah Road,
EN2 8EQ**

Applicant : **High Oaks (Enfield) Management
Company**

Representative : **Stiles Harold Williams Partnership LLP**

Respondent : **Various leaseholders as set out in the
appendix attached to the application**

Representative : **None**

Type of application : **To dispense with the statutory
consultation requirements under
section 20ZA Landlord and Tenant Act
1985**

Tribunal members : **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 118 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 the works to rectify a leak (and consequent works) as set out in 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.

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 all affected Buildings.

The Application

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

1. 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.
2. 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.
3. By directions dated 2 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 18 September 2024, by email, hand delivery or first-class post:
 - (a) Copies of the application form;
 - (b) A copy of the directions.

4. A copy of the directions were also to be displayed in a prominent place in the common parts of the Property. The Applicant had to confirm that this had been done.
5. The directions provided that leaseholders who oppose the application had to, by 14 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.
6. The Tribunal has received no completed form from any leaseholder or sublessee.
7. 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

8. The Applicant is the Management Company as defined in the original Lease and Lease extension (see below) in a tri-partite Lease.
9. The Applicant states that the Property is a residential purpose-built block of 24 flats, consisting of two floors.
10. It is said that there is a break in the water main underneath one of the flats which was causing additional damage. Access was granted to flat 13 on or about 1 August 2024 and a mould wash was applied to affected areas, but there was a further leak below ground which required the complete wall to be removed in a cupboard and a new main installed to the underground of the flat. A quote for the works was obtained for £6,760 plus VAT (p.45) for the works set out below (total - £8,112). The works were:
 - (a) remove complete wall in cupboard to access base of mains;
 - (b) break open floor throughout flat forming a new channel for as new mains pipe which would lead right out to the outside chamber where a new pipe would be installed and connected, then tested, the floor to be made good and a plaster board installed into the cupboard to replace the old walls;
 - (c) Deep clean of areas.
11. The "Statement to explain reasons for application) (p.42) states that the application relates to the urgent repair of damaged water pipes to the flat (believed to be flat 13 having regard to the remainder of the application). It is said that due to delays regarding alternative accommodation from the insurer,

the Applicant agreed with the recommendation to seek dispensation so that the remedial work could be done as quickly as possible, to mitigate damage.

12. No consultation had taken place as the Applicant was waiting for confirmation from the insurer that the alternative accommodation (to be provided to the occupant(s) of the flat as they would need to be decanted) would be covered due to insufficient funding in the service charge.
13. A letter dated 4 September 2024 (p.14-p.37) was sent to the Respondent informing them that the application had been made (giving the case number) and providing a copy of the application. It is said that a copy of the application form would be placed on the notice board in each block and that if any leaseholder objected to the application, an objection form was to be completed and sent to the Tribunal and the Applicant. The bundle provided to the Tribunal contains photographs of the application form on a noticeboard (p.38-39).
14. The Applicant confirmed in an email dated 9 September 2024 (p.40) that letters were issued to all leaseholders on the 4 September (via first class post) and email were sent to those for whom the Applicant had email addresses on 6 September 2024 and the notice were placed on notice boards on 5 September 2024.
15. The Applicant emailed one of the leaseholders of Flat 11 (p.105) explaining the s.20 consultation process. It emailed /the leaseholders of Flat 19 on 6 September 2024 (p.107). It emailed the leaseholder of flat 22 on 2 August 2024 (p.109). It emailed the leaseholder of Flat 9 on 6 September 2024 (p.111). It emailed the leaseholder of Flat 1 on 5 August 2024 (p.113). It emailed the leaseholders of Flat 10 on 2 August 2024 (p.116).
16. The Tribunal has seen an original lease (p.47) and a lease extension (p.57). Under the original lease, the Company covenants as set out in the Fifth Schedule, which includes repairing obligations.

The Respondent's case

17. No respondent objected to the application.

The Law

18. 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”.

19. 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

20. 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.
21. The Tribunal has taken account of the decision in *Daejan Investments Ltd v Benson and Others* in reaching its decision.
22. The leaseholders have been informed of the works and the Tribunal notes the urgency of the works. There is no evidence before the Tribunal that the Respondents were prejudiced by the failure of the Applicant to comply with the consultation requirements.
23. 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 above.
24. The Tribunal make no determination as to whether the cost of the qualifying long-term agreement 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.
25. 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 all relevant Buildings.

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).