FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AS/LSC/2024/0030** **LON/00AS/LDC/2024/0179**
Property	**:**	**Various flats in Garden Close, Ruislip HA4 6BD**
Applicants	**:**	**The leaseholders listed in Schedule A attached to this determination**
Representative	**:**	**Lead leaseholders Mr and Mrs Littlejohn**
Respondent	**:**	**Ultrahome Ltd**
Representative	**:**	**Mr S Undsorfer of Parkgate Aspen**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985 and for dispensation pursuant to section 20ZA of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge N O'Brien, Ms M Krisko FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**6 January 2025**
Date of determination	**:**	**16 January 2025**

DECISION

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Decisions of the tribunal

(1) The Tribunal does not grant the Respondent's application for dispensation from the statutory consultatioan requirements.

(2) The Tribunal determines that the sum of £500 per flat is payable by the Respondents named in Schedule A in respect of the major works completed in 2017 described in paragraph 7 of this determination.

(3) The Tribunal makes the determinations as set out under the various headings in this Decision.

(4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that none of the landlord's costs of the tribunal proceedings may be passed to the Applicants through any service charge or as an administration charge.

(5) The Tribunal determines that the Respondent shall pay the Applicants £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees.

The applications

1. The leaseholders in case ref LON/00AS/LSC/2024/0030 ('the s.27A Application') seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by them in in respect of major works carried out to Garden Close in 2017. They challenge the total cost of the works and the management fee charged by the Respondent's agent of 10% of the total cost. A list of the 11 applicants joined to that application is attached to this determination as Schedule A. The landlord in case ref LON/00AS/LDC/2024/0178 ('the dispensation application') seeks dispensation from the statutory consultation requirements in respect of the same works. The named respondents to that application are listed in Schedule B attached to this determination.

2. For clarity, the leaseholders who have applied under s.27A of the 1985 Act will be referred to as the Applicants in this determination and the landlord will be referred to as the Respondent.

The hearing

3. The Applicants were represented by Mr and Mrs Littlejohn, the leasehold owners of flats 7, 23 and 27 at the hearing and the Respondent was represented by Mr Solomon Unsdofer of Parkgate Aspen, the former managing agents appointed by the landlord. We were provided with a

151-page agreed bundle for the s.27A application and a 168-page agreed bundle for the dispensation application.

The background

4. Garden Close is a small estate consisting of six conjoined blocks containing a total of 38 flats, with each block consisting of 3 or 4 floors with 5 or 7 flats per block. It is approximately 100 years old.

5. Neither party requested an inspection and the tribunal did not consider that one was necessary to resolve the issues in dispute.

6. The Applicants each hold a long lease of flat in Garden Close which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

7. In 2016 the Landlord undertook a s.20 consultation exercise in respect of major refurbishment works which it intended to undertake to the common parts of each of the blocks. The works consisted of works to the flooring in the communal staircases and hallways (the flooring works) and decoration works to the common parts (the decoration works). Both sets of works were ultimately carried out by Tindall Property Services, who were not named in any of the s.20 consultation notices sent out by the landlord. It is common ground that the decision to switch contractors shortly before the works commenced meant that the s.20 consultation process was not complied with and that, absent a successful application for dispensation from the statutory consultation requirements, the landlord would be limited to recovering the sum of £250 from each flat in respect of the flooring works and £250 in respect of the decorating works, totalling £500 per flat.

8. The leaseholders were dissatisfied with the quality of the works undertaken by Tindall Property Services and in early 2021 a number of them applied to this tribunal pursuant to s.27A LTA 1985 for a determination of their liability to pay the cost of the major works (Case ref LON/00AS/LSC/2021/0201). They disputed their liability to pay due to the unsatisfactory standard of the works and due to the landlord's failure to comply with the s.20 consultation requirements. No application was made by the landlord for dispensation from the statutory consultation requirements. In a written decision dated December 2021, the tribunal determined that, in the absence of any application for dispensation from the statutory consultation requirements, the amount recoverable from the leaseholders was £500 per flat. It also considered that, had the costs recoverable not been so limited, it would have reduced the amount recoverable in respect of the major works by 10% to 15%.

9. That determination was expressed to be in respect of all leaseholders in Garden Close. In January 2022 the Landlord sought permission to

appeal and also asked the Tribunal to clarify which leaseholders were included in the determination as only 8 leaseholders were applicants in those proceedings. On 22 January 2022 the Tribunal refused permission to appeal and stated that when it referred to 'all leaseholders' in the determination, it referred to all 8 leaseholders who had joined in that application.

10. On 12 January 2024 the present s.27A application was received by the tribunal on behalf of 11 leaseholders of 9 flats in Garden Close. None of those persons were applicants in case ref LON/00AS/LSC/2021/0201. On or about July 2024 the tribunal received the landlord's dispensation application.

Preliminary Issues

11. At the start of the hearing we considered who were the appropriate respondents to the dispensation application made by the landlord as it was not clear to the tribunal whether the landlord was making the application for dispensation in respect of all the flats at Garden Close or just those leaseholders who were initially named as applicants in the s.27A application. Mr Unsdofer clarified that the Landlord was seeking dispensation in respect of all the leaseholders listed in the schedule attached to the Landlord's dispensation application filed with the tribunal (Schedule B). This is a list of all persons who were leaseholders as at the date on which the Right to Manage was acquired by the leaseholders of Garden Close in 2021. We were informed by Mrs Littlejohn that at least 5 flats in Garden Close had been sold between the completion of the works in Spring 2017 and the acquisition of the right to manage in 2021, and that consequently some of the persons on the landlord's list of respondents were not leaseholders at the material time. We also considered correspondence which the tribunal had on file from the landlord's representative which indicated that the only persons who had been served with the dispensation application were the 11 applicants listed in the leaseholder's s27A application. Mr Unsdorfer told us that as far as he was aware all of the leaseholders on the landlord's list of respondents had been served with the application, but he was not in a position to provide us with any evidence that this had been done. We noted that the only persons who had responded to the dispensation application were named applicants in the s.27A application.

12. We were not satisfied that all of the Respondents listed in the dispensation application had in fact been served with that application in accordance with the tribunal's directions. We further considered that the list attached to the dispensation application was out of date in that it included persons who were not leaseholders in 2017 and excluded persons who were. Consequently we considered that we would only consider the dispensation application in respect of the leaseholders listed in the s.27A application as it was accepted by Mr and Mrs Littlejohn that they were all leaseholders

at the relevant time and that the email addresses which the Respondent used to serve each them was the correct up-to-date address for each.

13. We will first consider the Landlord's dispensation application and then consider the Lessee's s.27A application.

Legal Framework: Dispensation

14. 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.

15. 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*".

16. 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.

17. Dispensation will not be granted simply because the works are urgent; the primary consideration is whether the leaseholders have suffered any relevant prejudice (see *Marshall v Northumberland and Durham Property Trust [2022] UKUT 92 (LC)* at para 64).

18. In *Lambeth LBV v Kelly [2022] UKUT 290 (LC)* the Upper Tribunal clarified that the First Tier Tribunal does have jurisdiction to consider

an application for dispensation from the statutory consultation process made after a determination as to the reasonableness of the charges in question pursuant to s.27A.

The Landlord's Case

19. The landlord relies on a statement of case in the form of a witness statement prepared by Mr Unsdofer date 10 October 2024. He submits that save for the decision to instruct a different contractor, the section 20 consultation process was complied with and that no prejudice was caused to the leaseholders. He explains that the flooring and redecoration works could not start until planned electrical works in the common parts had been completed in December 2016. The electrical works required alterations to parts of the floor in the common parts and resulted in an increased number of trip hazards. The contractor which the landlord had chosen to instruct, and which had been selected in the course of the section 20 consultation process, was not then available and consequently the landlord decided to instruct the company which had undertaken the electrical works, Tindall Property Services (Tindall) to undertake the flooring and redecorating works. Mr Unsdofer states that the quotation supplied by Tindall to complete both sets of work, at £36,300 plus VAT, was lower than the lowest quotes by the Landlord's previously nominated contractors for the flooring and decorating works which had totalled £14,792 and £26,370 respectively. He accepts that the final cost of £54,624 was rather higher but explains that it transpired that the works required in particular to the floors proved to be more extensive than had been quoted for. In addition the condition of the plasterwork in the common parts was worse than had been previously thought and this increased the final cost of the redecoration works. He makes the point that had the landlord simply instructed its previously nominated contractors to subcontract the works to Tindall, there would have been no breach of the s.20 consultation requirements.

20. In answer to questions put to him by the panel Mr Unsdorfer could not explain why no application was made in late 2016 for dispensation or why it had taken the Landlord nearly 8 years since the completion of the works to make the necessary application, despite being aware of the need for the same since December 2016. He could not explain why the landlord did not issue the dispensation application for nearly three and a half years after the previous determination of this tribunal.

The Applicants' Case

21. Mrs Littlejohn submitted on behalf of the Applicants in the s.27A application that the last-minute change of contractor had prejudiced the leaseholders. Firstly they consider that the quality of the decorating works undertaken by Tindall was extremely poor. They also consider that the floor coverings to the staircases had been laid incorrectly causing it to split in places. The leaseholders have obtained a quote from their new

groundskeeper for the works which they say are needed to remediate the decoration works carried out 8 years ago by the landlord, a Mr Patrick Murphy. The RTM company retains Mr Murphy to carry out general maintenance to the estate and is himself a leaseholder. He has quoted £12,6000 for this work in respect of the whole estate. The leaseholders have also obtained a quote to replace the floorcovering on the staircases from a company called TMCD Ltd in the sum of £11,500.

22. Mrs Littlejohn drew our attention to the scope of the works proposed in the initial section 20 notice of intention at page 24 of the dispensation bundle. It included the following;

> *"Internal repairs and redecorations to the six communal areas including: hack off and replaster. Strip; and reline both the wall and the lining paper woodwork treatment and repair Artex portions of the ceiling. Paint the ceiling walls and woodwork. Uplift and dispose of vinyl and plywood flooring, supply and fit Polysafe Classic Vinyl to communal areas which will include welding joins supply and fit nosing scour mats and durbars, Other associated works"*

She contrasted this with the works included in the quote dated 13 December 2016 supplied by Tindall. This is included at pages 46 and 47 of the dispensation bundles. She submits that in particular the redecorating works set out in that quote were far less extensive than the works set out in the Stage 2 notices which had been sent out to the leaseholders. In particular the Tindall quote did not refer to hacking off or replastering, or of stripping the walls. It referred only to preparation and making good of all surfaces and rehanging the woodchip wall covering. She drew our attention to recent photographs of a stairwell and hallway in the estate which shows that the woodchip wallcovering is still present. She told us that the Tindall quote was not provided by the landlord's managing agents to the applicants until 2021.

23. The Landlord's position is that the allegations of poor workmanship even if proved, would not amount to prejudice as described by the Supreme Court in *Dejan v Benson (above)*. Mr Unsdofer points out that the managing agents had no response to any of the s.20 notices that were sent out to the leaseholders. No alternative contractors were suggested and no issue was taken with the cost of the works or their extent.

The Decision

24. We are satisfied that the applicants have demonstrated they have on the balance of probabilities suffered relevant prejudice. The Supreme Court in *Dejan* indicated that the tribunal should be sympathetic to any credible allegation of prejudice made by leaseholders who oppose the grant of dispensation (per Lord Neuberger at para 78). In this case not only were the leaseholders not informed of the identity of the chosen contractor until just before the works commenced, but they were also not afforded the

opportunity to inspect the quote that Tindall had provided. Had they been provided with the opportunity to inspect the Tindall quote before the works had started we consider that it is quite possible that one or more of the leaseholders would have objected, as the works outlined in that quote demonstrably fell short of the scope of the works included in the stage 2 notice of estimates dated 15 February 2016 which had been sent out to the leaseholders. Anything beyond that is speculation but it is telling that the issues which the leaseholders take with the decoration works carried out by Tindall relate directly to their scope; in their statement of case in the s.27A application they describe the works undertaken by Tindall in the following terms

> *"The result of the work was a big disappointment to the leaseholders as it was an exact match of the dated and unappealing colours that were there already. It was also a very poor job overall with even easily fixed details being left unamended, Instead of getting an updated look and quality work which we believed we were paying for, we got a shoddy quick fix"*

25. We do not accept the submission that the substitution made no difference because the previously nominated contractor could simply have subcontracted the work to Tindalls. Had this happened it seems to us likely that the works would have been completed in accordance with that contractor's original specification which presumably was in line with the works set out in the Stage 2 notice.

26. We have also borne in mind the landlord's unexplained delay in making the dispensation application. It is now over 8 years since the landlord decided to switch contractors and just under 8 years since the relevant works were completed. The costs in question have already been the subject of proceedings in this tribunal and we note from the previous determination that the landlord's legal representative indicated in the course of that hearing in December 2021 that his client intended to make a dispensation application. The further period of delay is entirely unexplained. The longer the delay the harder it will be for any affected leaseholder to prove prejudice. We note that Mr Unsdorfer was critical of the quality of some of the evidence relied on by the applicants, describing it as 'hearsay'. However the reality is that the quality of evidence will inevitably deteriorate with the passage of time, and the timing of this application was something that was entirely within the control of the landlord. In our view it would not be reasonable to dispense with the consultation requirements given the length of the delay in making the application.

<u>The s.27A Application</u>

27. The result is that the amount recoverable from the leaseholders is £250 per flat in respect of the flooring work and £250 in respect of the decoration works. However we have also considered what would have been a reasonable amount for the works, there being no dispute that it was reasonable in principle for the landlord to undertake them and no dispute that the costs were in principle recoverable under the terms of the leases. The previous determination of this tribunal was that the leaseholder's complaints regarding the quality of the works were well founded and that the recoverable cost of the works should be reduced by 10% to 15% to take account of that. That decision is not binding on this panel.

28. We consider that the leaseholder's criticisms of the quality of the flooring works are justified. As regards the floor covering applied to the stairways, it is clear that it has been laid incorrectly. It has been laid like a carpet i.e. as a single piece of vinyl covering each run of steps rather than a plank or strip of vinyl on each riser and each tread. Mrs Littlejohn drew our attention to a photograph of a flight of stairs in the estate supplied by the Applicant. It shows that the floor covering has split at the point where the tread of the step meets the riser.

29. We have been supplied with photos of one of the stairwells showing that the walls remains partially covered in woodchip. Had the works been carried out in accordance with the description in the Stage 3 notice, the walls would have been completely stripped and replastered as necessary.

30. We note that the quotes obtained by the leaseholder indicates that the cost of carrying out remedial works to the decorations now is £12,800 and the cost of replacing the flooring is £11,500. However it is not simply a question of subtracting the cost of remedial works from the total cost, as 8 years have passed since the works were undertaken, and in that time the condition of the common parts would have deteriorated irrespective of the initial quality of the works. In our view a reduction of 20% of the total costs is appropriate. This is a larger reduction then the range suggested by the tribunal in December 2021 but we note that the panel did not have in particular the evidence regarding the defective flooring before it.

31. As regards the 10% contract management fee charge by the landlord's agent in respect of the works, the Applicants brought no evidence to the tribunal to indicate that the fee is excessive. We do not consider that it is and had the amount recoverable not been capped we would have assessed it at 10% of the sum chargeable after the 20% deduction had been applied.

32. The Applicant made an application for a refund of the fees that they paid in respect of the s27A application. Having heard the submissions from the parties and considering the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicants within 28 days of the date of this decision.

33. In the application form, the Applicants to the s.27A application applied for an order under section 20C of the 1985 Act and an order under paragraph 5A of Schedule 11 to the 2002 Act restricting the landlord's rights to recover its costs of these proceedings. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under both section 20C of the 1985 Act and paragraph 5 A of Schedule 11 to the 2002 Act so that the Respondent may not pass any of its costs incurred in connection with either the dispensation application or the s.27A application through the service charge or as an administration charge.

Name: Judge N O'Brien **Date:** 16 January 2025

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).