FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/00CJ/LDC/2024/0031**
Property	**:**	**Wentworth Grange, Gosforth NE3 1NL**
Applicant	**:**	**Wentworth Grange Limited**
Representative	**:**	**Potts Gray Management Company Limited**
Respondent	**:**	**Various Residential Long Leaseholders**
Representative	**:**	**(None)**
Type of application	**:**	**Landlord & Tenant Act 1985 – Section 20ZA**
Tribunal member(s)	**:**	**Tribunal Judge L. F. McLean**
Date of decision	**:**	**16th December 2024 on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**

DECISION

DECISIONS OF THE TRIBUNAL

(1) The Tribunal grants unconditional dispensation from the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 (together, "the Consultation Requirements") in relation to the works at Wentworth Grange, Gosforth NE3 1NL ("the Property") which are described in the Applicant's application dated 12th April 2024 as being *Urgent EICR Remedial Works Required for Fire Safety Regulations Compliance and to comply with Insurance Requirements*.

REASONS

The application

1. The Applicant applies to the Tribunal for unconditional dispensation from the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 (together, "the Consultation Requirements") in relation to qualifying works.

2. The application is not opposed by any of the Respondents.

Background

3. The Applicant is said to be the management company for the Property, by which the Tribunal assumes that it is appointed under the terms of tripartite leases to provide management services to the leaseholders, including repairs and maintenance of the Property.

4. The Respondents are the various residential long leaseholders of the Property.

5. According to the Applicant's application form, the Property comprises 24 apartments over 6 floors including the Ground Floor.

6. The Applicant's Representative submitted an application dated 12th April 2024, in relation to "*Urgent EICR Remedial Works Required for Fire Safety Regulations Compliance and to comply with Insurance Requirements*". Collectively, these shall be referred to as "the Works".

7. On 17th October 2024, the Tribunal issued directions to the parties for the filing and serving of the Applicant's bundle within 14 days, with the filing and serving of any Respondent's statement of case within 14 days thereafter; and the Applicant was given permission to file and serve a final reply within 7 days after that. The Tribunal notified the parties that it considered that the application was suitable for determination on the papers provided by the parties and without a hearing.

8. The Applicant's statement of case stated that the Applicant had been required to carry out urgent works following a Fire Risk Assessment which determined that it was a mandatory requirement for an EICR to be carried out with immediate effect, and if this were not done then it would have been a health and safety risk and also an insurance risk to the development. The statement of case also stated that the agents had notified the Respondents of the process they would be carrying out.

9. The cost of the Works, as remitted through the Respondents' leasehold service charge demands, was due to exceed the statutory limit of £250 per leaseholder imposed by Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003, meaning that the Applicant had been required to comply with the Consultation Requirements set out therein unless the Tribunal grants dispensation in relation to the same.

10. None of the Respondents submitted any written responses in accordance with the above directions.

11. The Applicant submitted a statement of case and supporting documents, which the Tribunal has considered.

Grounds of the application

12. The Applicant's grounds of its application were set out very briefly in its statement of case. In summary, the Applicant asserted that the Works were required to be undertaken urgently to ensure health and safety and to reduce the insurance risk.

Issues

13. The only issue the Tribunal needed to consider was whether or not it is reasonable to dispense with the Consultation Requirements in relation to the Works. The application does not concern the issue of whether any service charge costs resulting from any such works are reasonable or indeed payable and it will be open to lessees to challenge any such costs charged by the Applicant in due course (under Section 27A of the Landlord and Tenant Act 1985).

Relevant Law

14. The relevant sections of the Landlord and Tenant Act 1985 read as follows:-

20 Limitation of service charges: consultation requirements
(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.

20ZA Consultation requirements: supplementary

(1) Where an application is made to the appropriate 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.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

15. The decision in the binding legal authority of *Daejan Investments Ltd v Benson* [2013] UKSC 14 confirms that the Tribunal, in considering dispensation requests, should focus on whether leaseholders are prejudiced by the failure to comply with consultation requirements.

Evidence and Submissions

16. The Applicant relied on evidence which accompanied its statement of case.

17. The Applicant's Statement of Case indicated that the Works were required urgently; the health, safety and welfare of lessees or adjoining owners would be affected if the Works were not carried out; and the need for the Works could not have been anticipated.

18. The Applicant enclosed copies of correspondence relating to a single cost estimate for the Works, and with the Respondents regarding the approach to be taken.

Determination

19. The Tribunal is concerned by the brevity of the Applicant's statement of case and the paucity of any supporting evidence put forward by the Applicant's Representative. There is no detailed schedule or specification of works, and there is no copy of the Fire Risk Assessment upon which the Applicant relies, which would be key to any finding of urgency.

20. The Tribunal is mindful that there will always be some inherent prejudice to leaseholders whenever consultation requirements are not complied with – if for no other reason than that the requirements are put in place for a specific purpose intended by Parliament. The main purpose of the Consultation Requirements is to reduce the risk of works being carried out needlessly or at greater cost than is reasonable (*Daejan Investments Ltd v Benson* [2013] UKSC 14).

21. However, the Respondents are required to at least raise an outline basis of how they would be (or have been) prejudiced by non-compliance, and to set out what they would have done differently if the Consultation Requirements had been fully complied with (*Aster Communities v Chapman* [2021] 4 WLR 74; *Wynne v Yates* [2021] UKUT 278 (LC)), which they have not done in this instance as no objections were received. The Tribunal also takes into account that no Respondent has challenged the Applicant's assertions in any regard regarding the need for the Works or the urgency of carrying out the same. If any of the Respondents had raised any objections, then the Tribunal would have needed to see a much better explanation from the Applicant before finding in its favour. But as there is at least the outline of an explanation from the Applicant as to why the application was made, and no objections have been received, the Tribunal concludes – but only by a very small margin – that the application should be granted.

22. Accordingly, the Tribunal determines that it is reasonable to grant dispensation from the Consultation Requirements in respect of the Works. This does not extend beyond that to any further or associated works which were not referred to by the Applicant.

23. The Tribunal considered whether there would be merit in attaching conditions to the grant of dispensation. However, it decided not to do this, as there were no immediately obvious conditions that the Tribunal should impose, and the Applicant had not been given the opportunity to make representations on any proposed conditions even if the Tribunal had been able to contemplate any.

24. In reaching this decision, the Tribunal reiterates that it remains open to the Respondents to apply to the Tribunal for a determination as to whether the service charges are otherwise payable subject to the terms of the leases and/or any statutory restrictions.

Name: **Date: 16th December 2024**
Tribunal Judge L. F. McLean

Rights of appeal

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).