FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AM/LDC/2024/0073**
Property	**:**	**90b Lansdowne Drive London E9 3ER**
Applicant	**:**	**London Brough of Hackney**
Representative	**:**	**In House**
Respondent	**:**	**Alexander Bauman-Lyons & Lorna Elizabeth Powell**
Representative	**:**	**In Person**
Type of application	**:**	**Application for dispensation from the consultation requirements of s20 under section 20ZA of the Landlord and Tenant Act 1985**
Tribunal member	**:**	**Mr A Harris LLM FRICS FCIArb**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**4 February 2025**

DECISION

Decision of the tribunal

1. The tribunal exercises its discretion to grant dispensation from the consultation requirements of s20ZA in respect of the works to remedy leaks in the roof into the upper flat

The application

2. The Applicant seeks dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") in respect of works required to cure a roof leak using the Council's QLTA contractor. The works cannot wait for a three-month consultation period. The works have were due to start when the application to the tribunal was made. The cost of the works has not been provided. Notice was given under s20 of the Landlord and Tenant Act 1985 to the leaseholder on 27 February 2024 of the intention to carry out works and stating that an application to the tribunal under s20 ZA would be made.

3. Directions were made on 23 September 2024 for a paper determination in the week commencing 11 November 2024. The case has been delayed. The only issue for the tribunal is whether it is reasonable to dispense with the statutory consultation requirements.

4. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable**.

The hearing

5. A written application was made by the Council as the freeholder.

6. A copy lease has been provided. The case was decided on paper and no appearances were made. The tribunal considered the written application form, copy letters to the leaseholders, and the specimen lease included in the bundle.

The background

7. The property is a three storey Maisonette mid terrace building built in 1899 and was subdivided into flats, and now contains two separate flats. The property was built with traditional bricks with a one bedroom flat on the first floor and a two bedroom flat on the second floor.

8. The flat is held on long lease which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

9. An inspection was not requested and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues.

10. The lease shows the scope of the works is within the service charge provisions of the lease. The tribunal directed the applicant to provide copies of the application and directions to the lessee. Confirmation was sent to the tribunal that the application had been provided to the leaseholders. No representations have been received objecting to the application as to the scope of the works or appropriateness of the application. Reasonableness and payability of the service charge is not within the scope of this application.

The Law

s20ZA of the Landlord and Tenant Act 1985

Service charges

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.

(3)The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a)if it is an agreement of a description prescribed by the regulations, or

(b)in any circumstances so prescribed.

(4)In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5)Regulations under subsection (4) may in particular include provision requiring the landlord—

(a)to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b)to obtain estimates for proposed works or agreements,

(c)to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d)to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e)to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(5A)And in the case of works to which section 20D applies, regulations under subsection (4) may also include provision requiring the landlord—

(a)to give details of the steps taken or to be taken under section 20D(2),

(b)to give reasons about prescribed matters, and any other prescribed information, relating to the taking of such steps, and

(c)to have regard to observations made by tenants or the recognised tenants' association in relation to the taking of such steps.

(6)Regulations under section 20 or this section—

(a)may make provision generally or only in relation to specific cases, and

(b)may make different provision for different purposes.

(7)Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

11. The applicable case law is Daejan Investments Ltd v Benson [2013] UKSC 14, 1 WLR 854 where the Supreme Court held that the relevant test is whether the leaseholders have suffered prejudice by the failure to consult. Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation

requirements, an unconditional dispensation should normally be granted.

The tribunal's decision

12. The tribunal exercises its discretion to grant dispensation from the consultation requirements of under s20 ZA of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003

Reasons for the tribunal's decision

13. The works were necessary to prevent further water ingress and damage to the upper flat.

14. The tribunal is satisfied that the leaseholders were aware of the works required and they have not objected.

15. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs. (1) provides:

    "Where an application is made to a [leasehold valuation] 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*" (emphasis added).

16. The Tribunal understands that the purposes of the consultation requirements is to ensure that leaseholders are given the fullest possible opportunity to make observations about expenditure of money for which they will in part be liable. The test laid down by the Supreme Court in Daejan v Benson is whether the leaseholders would suffer prejudice if the application were to be granted and a full consultation not carried out.

17. The tribunal considers that there is no prejudice to the leaseholders in granting dispensation as the works were urgently needed to prevent further water damage. The tribunal is satisfied that the risk of delay outweighs any possible prejudice arising from a failure to carry out the full consultation process.

18. The tribunal is satisfied the works were urgent and that dispensation should be granted.

19. The granting of dispensation is not concerned with the cost and recoverability of service charges for the works which are dealt with under section 27A of the Act.

Name: A Harris **Date:** 4 February 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).