



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

Case reference	:	CAM/26UC/LDC/2024/0609
Property	:	Silverbrook, Hicks Road, Markyate, AL3 8LJ
Applicant	:	Hicks Road Markyate Management Limited
Representative	:	Ringley Law
Respondent	:	All leaseholders of dwellings at the Property
Representative	:	None
Type of application	:	Section 20ZA Landlord and Tenant 1985 – To dispense with the requirement to consult leaseholders about the works
Tribunal member(s)	:	Judge Adcock-Jones
Venue	:	Decided on the papers at 197 East Road, Cambridge, CB1 1BA
Date of decision	:	6 February 2025

DECISION

Decision of the Tribunal

The Tribunal grants an order dispensing with the consultation requirements imposed under section 20 of the Landlord and Tenant Act 1985 in respect of the installation of a roller shutter, CCTV and electricity to the Property.

The Application

1. The Applicant seeks an order pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a dispensation of the consultation

requirements imposed under section 20 of the 1985 Act and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the 2003 Regulations”) in respect of the installation of a roller shutter, CCTV and electricity to the Property.

Hearing

2. The parties did not request a hearing and so the matter was dealt with on the papers.

Background

3. The Property comprises a site with a mix of flats, freehold houses and commercial units.
4. The Applicant is the Residents’ Management Company which is managed by Ringley Chartered Surveyors appointed as managing agents on 17 October 2024.
5. The Applicant claims that the works were urgently required as instructed by the insurance company and without the works being completed flats 1 – 15 Richmond Square and commercial Units 1, 2 and 3 would not have been insured.

Directions

6. The Tribunal issued directions on 19 December 2024 providing for service of the Application, directions, description of the relevant works for which dispensation is sought, estimate of the costs of the relevant works and any other evidence relied upon on the Respondents being the leaseholders of dwellings at the Property who may be liable to pay a service charge to contribute towards the costs of the relevant works.
7. Provision was further made for the Respondents to be given an opportunity to respond to the Application and the Tribunal did not receive any responses from the leaseholders.

Inspection

8. The Directions issued did not provide for an inspection of the Property and no request for an inspection was made by the Parties. The Tribunal did not consider an inspection to be necessary or proportionate to the issue.

The Applicant's Case

9. The Applicant's case is set out in the application dated 22 October 2024, supporting documents and the witness statement of Kate Robinson dated 6 January 2025.
10. The Applicant has provided the following invoices for works undertaken to the Property:

<u>Invoice</u>	<u>Relating to Item</u>	<u>Cost</u>
MLS Electrics Ltd 02/09/2024 Reference 482074	Electric Works	£1,422.00 incl. VAT
MLS Electrics Ltd 25/09/2024 Reference 482075	Electric works and CCTV	£1,766.40 incl. VAT
JD Door Security Limited 21/09/2024 Reference INV-1732	Roller Shutter Door	£3,462.00 incl. VAT

11. The Applicant has produced a sample copy of the lease relating to the Property under Land Registry Title Number: HD531069.
12. The sample lease provides at clause 6.5 the landlord's covenant to keep the Property and the Estate insured and for the Applicant at clause 4 Schedule 4 to keep the Building Common Parts in good repair and decoration and further at clause 5 the external walls, structure, roof and foundations of the Building. The Tribunal further notes the all-encompassing provisions under Schedule 4, clauses 11 and 19 and to provide maintain repair decorate and renew in relation to the dustbins and refuse containers under clauses 17.1 and 17.2.
13. Clauses 5.7.1 and 5.7.2 provide for leaseholders to contribute towards the costs of such works by way of a service charge referred to as Expenses within the lease in performing and carrying out the obligations specified in Schedule 4.

The Respondent's Case

14. The Tribunal is satisfied of the evidence provided in respect of the email of 6 January 2025 that the Application, Directions and requested information were served upon the Respondents. Whilst the Directions

invited representations from the Respondents, no representations have been received.

The Law

15. Section 20 of the 1985 Act provides that:

(1) Where this section applies to any qualifying works....., 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) a leasehold valuation tribunal.

16. The effect of section 20 of the 1985 Act is that, the relevant contributions of tenants to service charges in respect of "qualifying works" are limited to an amount prescribed by the 2003 Regulations unless either the relevant consultation requirements have been complied with in relation to those works or the consultation requirements have been dispensed with in relation to the works by (or on appeal from) the tribunal.

17. "Qualifying works" are defined in s.20ZA of the 1985 Act as "works on a building or any other premises", and the amount to which contributions of tenants to service charges in respect of qualifying works is limited (in the absence of compliance with the consultation requirements or dispensation being given) is currently £250 per tenant by virtue of Regulation 6 of the 2003 Regulations.

18. Section 20ZA of the 1985 Act provides:

(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.

19. The basis on which this discretion is to be exercised is not specified.

20. The consultation requirements for qualifying works are set out in Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003.

The Tribunal's Decision

21. The Tribunal referred to the authority of *Daejan Investments Limited v Benson et al* [2013] UKSC 14 which sets out the Tribunal's jurisdiction to dispense with the consultation requirements and the principles upon which that jurisdiction should be exercised.
22. The scheme of the provisions is designed to protect the interests of leaseholders, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.
23. The purpose of the consultation requirements is to ensure that leaseholders are protected from paying for works which are not required or inappropriate, or from paying more than would be reasonable in the circumstances.
24. The Tribunal needs to consider whether it is reasonable to dispense with the consultation process. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any prejudice has been suffered by any leaseholder because of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.
25. The burden is on the Applicant in seeking a dispensation from the consultation requirements. However, the factual burden of identifying some relevant prejudice is on the leaseholder opposing the application for dispensation. The leaseholders have an obligation to identify what prejudice they have suffered because of the lack of consultation.
26. The Tribunal is satisfied that the works are qualifying works to which the provisions of section 20 of the 1985 Act and the 2003 Regulations apply.
27. Whilst the Tribunal notes that it would have been of assistance to have been provided with further documentary evidence from the relevant insurer relating to the request for the works to be undertaken in order to insure the Property and the date for renewal of the insurance, the Tribunal is satisfied by the contents of Kate Robinson's witness statement dated 6 January 2025 that the works were urgently required in order to facilitate the insurance of the Property.
28. The Tribunal is satisfied that the works are for the benefit of and in the interests of both landlord, Applicant and leaseholders of the Property. The Tribunal again records that no response to the Directions from the Respondents was received and therefore none of the leaseholders objected to the grant of dispensation.

29. The Tribunal considered any financial prejudice suffered by the leaseholders due to the failure to consult. The Tribunal has not been informed whether an independent report from an expert was obtained and noted that the leaseholders have not had the chance to nominate a contractor of their choice, and the works had not been put out to tender.
30. The Tribunal has taken into consideration that the leaseholders have not had the opportunity to be consulted under the 2003 Regulations. However, the works were urgent to facilitate the insurance of the Property. All works were completed in late September 2024 and only those leaseholders affected by the works, being 1-15 Richmond Square and commercial units 1, 2 and 3 will be contributing towards the works rather than the entirety of the other leaseholders within the site.
31. In circumstances where, had the work not been undertaken urgently, the Property would have been left uninsured, the Tribunal is satisfied that whilst the relevant leaseholders were not given an opportunity to make comments on the works or nominate a contractor, in losing an opportunity to make observations and to comment on the works or to nominate a contractor, they have not suffered any significant prejudice. The Tribunal notes that had the insurance lapsed, the potential prejudice to the leaseholders could have been significant.
32. Accordingly, the Tribunal having considered the evidence is satisfied that it is reasonable to dispense with the consultation requirements as requested by the Applicant. The Tribunal therefore makes an order that the consultation requirements are dispensed with in respect of the installation of a roller shutter, CCTV and electricity to the Property.
33. This application relates solely to the granting of dispensation. If, when they are charged, the relevant leaseholders of 1-15 Richmond Square and commercial units 1, 2 and 3 wish to contest the reasonableness of the costs, or challenge any service charge, then they retain the right to apply to the Tribunal for a determination of those issues under section 27A of the Landlord and Tenant Act 1985.

Name: Judge Adcock-Jones

Date: 6th 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).