FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LDC/2024/0659**
Property	**:**	**203-209 Sussex Gardens, Westminster, London W2 2RJ**
Applicant	**:**	**Church Commissioners for England (landlord)**
Representative	**:**	**Savills, managing agent**
Respondent	**:**	**Leaseholders of flats at the Property, whose details appear on the schedule annexed to the application**
Representative	**:**	**Mr Jens Victor** **Mr Terry A'hearn**
Type of application	**:**	**To dispense with the requirement to consult lessees about major works, s.20ZA Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Mark Jones**
Venue	**:**	**Paper determination**
Date of decision	**:**	**12 February 2025**

DECISION

Summary of the Decision

1. **The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act in respect of external works to the main communal heating distribution system pipes carried out in and around October 2024.**

2. The Tribunal does not impose any conditions on the grant of dispensation.

3. The Tribunal has made no determination as to whether costs of the works are reasonable or payable.

The Application

4. The Applicant landlord applied by application dated 30 October 2024 for dispensation under Section 20ZA of the 1985 Act from the consultation requirements imposed by Section 20 of the 1985 Act, in respect of works undertaken at the Property which commenced in October 2024, comprising repairs to the communal heating distribution system pipes serving the Property.

5. The application contains no description of the Property in section 4, so that it is not clear how many flats are affected by the works, a point made in §(2) of the directions issued on 18 December 2024. As also expressed in that paragraph, it is unknown to the Tribunal how large individual units may be, what the age of the Property is, whether the flats are purpose built or converted from former terraced housing, or whether there are any ground floor commercial units which may share the heating service. The Applicant's failure to clarify these details in the box specifically included for that purpose is regrettable.

6. Nevertheless, it is evident from the application that it concerns pipework on heating flow and return legs, which developed a leak, causing them to fail. Upon investigation by the Applicant's appointed contractor, PHD Mechanical, it was found that the pipework had perished through the top and bottom of the building, due to age. After exposing further sections of the pipework by the removal of lagging it was found that the rest of the steel pipe showed signs of leakage, and corrosion attributable to the main leak. All the pipework on the heating flow and return legs urgently required replacing.

7. The Application is predicated on the basis of the works in issue being urgently required, against the need to restore the heating system to full working order, against the onset of winter. The Applicant contends, in summary, that it was not reasonable to delay works pending full statutory consultation.

8. The cost of the repairs exceeded the £250 per tenant threshold in S.20 of the 1985 Act, being (as set out in the application) an estimated £27,037.60 plus costs of scaffolding in an estimated sum of £6,060.00, the total whereof is £33,090.60. The disclosed quotation from PHD Mechanical dated 8 October 2024 adds to £22,531.33 plus VAT, including the provision of scaffolding, and the 2 invoices from that business, dated 9 and 31 October 2024 are each in the sum of £13,518.79, totalling £27,037.58. Removing the VAT element of each invoice, £2,253.13, leaves a net cost of £22,531.32, which is just a penny less than

the quotation. It is unclear to the Tribunal how the Applicant's higher figure of £33,090.60 has been arrived at, but it may be that the additional £6,060 relates to initial investigations, also requiring scaffolding, as appears to have been understood by Mr Martindale FRICS when giving directions.

Paper Determination

9. In its application the Applicant stated that it would be content with a paper determination if the Tribunal considered it appropriate. By its directions made on 18 December 2024 the Tribunal allocated the case to the paper track (i.e. without giving directions for an oral hearing), but directed that any party had the right to request an oral hearing.

10. No requests for an oral hearing were made, and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.

11. Before making this determination, the papers received including the Applicant's hearing bundle comprising some 65 pages were considered, along with correspondence received from the parties, to ascertain whether the issues remained capable of determination without an oral hearing and it was decided that they were, notwithstanding the formal representations from two Respondents, Mr Jens Victor and Mr Terry A'hearn, of 209A and 207A Sussex Gardens respectively, in particular where each gentleman crossed the appropriate box in their respective Reply Forms to indicate that they did not wish to attend an oral hearing of the application.

12. Whilst the Tribunal makes it clear that it has read the bundle and the other documents lodged, the Tribunal does not refer to every one of the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to specific documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account.

The Law

13. The relevant section of the 1985 Act reads as follows:

"S.20 ZA Consultation requirements:

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."

14. The issues arising on such applications were examined in detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson* [2013] UKSC 14. In summary the Supreme Court noted the following:

    a. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.

    b. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.

    c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

    d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.

    e. The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).

    f. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.

    g. The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.

    h. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.

    i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

15. The Applicant's case is summarised in paragraphs 4 to 7, above, augmented by the Tribunal's own inquiry into the financial documents, summarised in paragraph 8, and into the quote and invoices

summarised in §16, below. There was no further witness statement for the Applicant.

16. The nature and extent of the works is evident from the documentation from PHD Mechanical. It involved erection of scaffolding to ensure safe working access, removal of old insulation and weather proofing, cutting out and replacing the heating flow and return pipes to the exit from the boiler room, installing new pipes up the outside of the building, connecting to the apartments therein, filling and venting, installing new 25mm foil-backed pipe insulation, installing PIB weather proofing, clearing the site and removing the scaffolding. The quotation makes it plain that for the duration of the works, over what was estimated to approximately 8 working days for 2 engineers, the heating for the affected flats would have to remain off.

17. Consultation with leaseholders has been limited, owing (the Applicant contends) to the urgency of the repair works. The Applicant issued a Notice of Intention to the leaseholders on 10 October 2024, advising of a consultation period expiring on 9 November 2024, but accompanied that with a second letter, headed *"Section 20 Notice of Intention – Urgent Heating Pipes Repairs"* advising of its intention to commence the asserted urgent works on 14 October, over an estimated period of approximately 2 to 3 weeks.

16. As summarised above, Mr Jens Victor of 209A and Mr Terry A'hearn of 207A Sussex Gardens each completed a Reply Form indicating that each objected to the application. Mr A'hearn's was dated 3 February 2025, being 12 days after the expiry of the deadline provided in the directions, but the joint nature of the objection was in any event entirely clear from the material previously submitted, including a joint witness statement bearing both gentlemen's names. It appears that both claim to speak on behalf of other, unspecified leaseholders, but no other persons have been named, nor have they indicated their own objections.

17. The Tribunal has considered Mr Victor and Mr A'hearn's evidence carefully. It may be summarised thus:

    (i) They complain about the contradictory nature of the two notices received on 10 October 2024.

    (ii) They note that Savills decided with their *"usual contractor PHD"* that the pipes in issue had reached the end of their functional life, without any third party being invited to assess the condition of the pipes or the costs of repair works.

    (iii) They refer to Savills' *"preliminary invoice"* in the sum of £39,717.12, as against PHD's estimated cost of £27,037.60 inc VAT.

    (iv) They note the difference between PHD's quoted 8 days, as against the estimate of 2-3 weeks contained in Savills' notice.

(v) They complain that after 3 months of requests, Savills have failed to produce a valid contract with PHD, evidence of payment or of communication between the two entities.

(vi) They question the asserted urgency of the works, where (by contrast) installation of a new boiler over the winter of 2023-4 took 3 months, leaving residents with no heating or hot water.

(vii) Echoing a point made in the directions, they refer to the absence of evidence of a regular programme of inspections, maintenance and repair.

(viii) Finally, they raise the issue that leaseholders are entitled to be consulted about issues affecting how their money will be spent.

18. A further issue arises in relation to the notification of leaseholders, where the Tribunal's directions required the application and a copy of the directions to be delivered to all Respondents and displayed prominently in the common parts of the Property by 15 January 2025. The Tribunal has seen correspondence suggesting that that was not done in the cases of all leaseholders, and all buildings.

Determination

19. Dispensation from the consultation requirements of S.20 of the 1985 Act may be given where the Tribunal is satisfied that it is reasonable to dispense with those requirements. Guidance on how such power may be exercised is provided by the leading case of *Daejan v Benson*, referred to above.

20. Where there was failure to comply with the statutory regime, the issue is simply whether by not being consulted the Respondents have suffered prejudice.

21. As to whether all individual lessees were or were not provided with copies of the application and directions, the Tribunal has regard to an email from Hanna Palwliszyn of Savills dated 10 January 2025, in which it was stated that the required documents were delivered on 8 January, having been sent by first class post on 7 January, and also displayed in the common parts of the building as shown in an accompanying photograph. The photograph appears to show the information displayed in one set of common parts, and as the Tribunal understands the objections, there are said to be further separate entries to blocks where they were not so displayed. Absent hearing evidence from witnesses the Tribunal finds it impossible to resolve this question, but does find that the Applicant complied with the directions by sending the documents by first class post on 7 January 2025 to all lessees.

22. If letters went astray in the post, or indeed if the application and directions were not displayed in all necessary common parts, that is again to be regretted, but the important point is whether or not the application came to attention of the lessees, and all who wished to were able to respond to it. From the emphatic responses of Mr Victor and Mr A'hearn, their correspondence indicating that they have been speaking with all lessees regarding the matte, and from the fact that they assert that they speak on behalf of the lessees as a body, the Tribunal is satisfied that the lessees were indeed well aware of the application, one way or another.

23. Further, Mr Victor and Mr A'hearn articulated every relevant point that might conceivably have been advanced by any lessee seeking to object to the application.

24. Turning to those points, the contradictions highlighted at §17(i), above are evident on the face of the documents. The Preliminary Notice in long form certainly reads as a starting point for a s.20 consultation process.

25. The second letter, however, clearly states the landlord's intention to start work urgently. While the contrast between the contents of the two letters may well have caused some confusion to lessees, the Tribunal finds that the intention and meaning of the second letter was to provide information as to the Applicant's objectives, which were, clearly, to effect emergency repairs to the heating system as swiftly and efficiently as possible. While any confusion caused is to be regretted, the Tribunal finds no unfair *prejudice* to lessees from the correspondence: indeed, the information provided was, the Tribunal finds, demonstrably a better way to proceed than, for example, to have told the lessees nothing at all about the proposed works.

26. Points §17(ii), (iii), (iv), (v) and (vii) appear to the Tribunal to be very much directed to the issues of whether the costs of the works were reasonably incurred, and/or whether the works carried out were effected to a reasonable standard. As was made clear in §(6) of the directions, the present application is concerned solely with the issue of *dispensation*, being whether or not it is reasonable to dispense with some or all of the consultation requirements in respect of what are said to have been urgent works.

27. This is a distinct issue from whether any service charges are reasonable or payable, a point that will be returned to in §34 below.

28. Points §17(vi) and (viii) appear to the Tribunal to be most germane to the issues it must consider on this application. In those regards:

    28.1 The fact that the Applicant's contractors may have taken what might or might not have been an inordinately log time to replace a boiler historically is of no relevance (besides historical context) to the present application, which is concerned with the

reasonableness or otherwise of granting dispensation in respect of these specific works.

28.2 It is clear to the Tribunal that the works in question were considered by the Applicant to have been required to rectify an emergency, against the condition the heating pipes were found to be in, imperilling the provision of heat to the affected flats, as winter was imminent. Delaying the works in order to comply with the full consultation requirement would have been seriously detrimental to the residents of the Property.

28.3 Leaseholders are, indeed, entitled to be consulted about the spending of their money: that is the point of the statutory consultation regime under section 20 of the 1985 Act.

28.4 Nevertheless, s,20ZA of the 1985 Act permits a landlord to seek a determination to dispense with all or part of those consultation requirements, which the Tribunal may grant if satisfied that it is reasonable to do so.

29. Following *Daejan v Benson*, the core issue to be determined on the application is simply whether by not being consulted the Respondents have suffered *prejudice*.

30. In the circumstances of this case the Tribunal finds nothing on the evidence to establish that the Respondents would suffer prejudice by the grant of dispensation from the statutory consultation procedure.

31. Accordingly, the Tribunal is satisfied that it is appropriate to dispense with the consultation requirements for the works in issue.

32. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of external works to the main communal heating distribution system pipes carried out in and around October 2024.**

33. **The grant of dispensation is unconditional**.

34. **In granting dispensation, the Tribunal makes no determination as to whether any service charges are reasonable or payable. This determination does not affect the right of the Respondents to challenge the costs or standard of work if they so wish.**

35. **In accordance with paragraphs 6, 7 and 8 of the directions dated 18 December 2024, it is the Applicant's responsibility to serve a copy of the Tribunal's decision on all Respondent leaseholders to the application.**

Name: Judge Mark Jones **Date:** 12 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).