FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BA/LDC/2025/0623**
Property	**:**	**Cascades Court,13-19 Hartfield Crescent,Wimbledon,SW19 3RL**
Applicant	**:**	**Cascades Court Limited, represented by Grace Miller and Co**
Respondents	**:**	**Leaseholders of Cascades Court#**
Type of Application	**:**	**Dispensation from consultation requirements under Landlord and Tenant Act 1985 section 20ZA**
Tribunal Members	**:**	**Judge Professor R Percival**
Venue	**:**	**Remote paper determination**
Date of Decision	**:**	**31 March 2025**

DECISION

Decisions of the tribunal

(1) The Tribunal, pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act"), grants dispensation from the consultation requirements in respect of the works which are the subject of the application.

Procedural

1. The landlord submitted an application for dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act") and the regulations thereunder, dated 17 March 2025.

2. The Tribunal gave directions on 12 February 2025. The directions provided for a form to be distributed to those who pay the service charge to allow them to object to or agree with the application, and, if objecting, to provide such further material as they sought to rely on. The application and directions was required to be sent to the leaseholders and any sublessees, and to be displayed as a notice in the common parts of the property. The deadline for return of the forms, to the Applicant and the Tribunal, was 5 March 2025.

3. The Applicant confirmed that the relevant documentation had been sent to the leaseholders.

4. Objections were received from Dr Pirhadi (flat 23), Mr Ranganathan (flat 20) and Mr Prego (flat 19).

The property and the works

5. The property comprises four blocks, including a total of 39 flats.

6. The works relate to a defect in a kitchen stack pipe serving a number of the flats. The account given by the managing agent is as follows. In the first instance, a major leak affected three flats, making one, flat 29, uninhabitable. Investigations showed that, as a result of a building defect, the kitchen stack pipe was not adequately supported, with the result that the pipe has corroded and gradually dropped. This resulted in a join in the stack pipe coming away completely just under the ceiling of flat 31, resulting in the damage in flat 29, and the other two flats. The Applicants engaged a company called Unbloc Drainage Engineers Ltd to implement a temporary patch repair. This company is the Applicant's preferred drainage engineer, with on-going responsibility for maintenance of the drainage system.

7. Unbloc subsequently recommended that for a final fix, further supporting brackets should to be installed in the six flats (29, 31, 33, 35, 37, 39) that share this stack pipe, as would have been the case if the pipe had been installed correctly when built. As the stack pipe needs to be lifted slightly back up to its original height, the connections to the appliances in each of the flats' kitchens will need to be reinstated so they are not at risk of braking or coming away causing further leaks in the future.

8. Unbloc recommended that the final fix works should be carried out as a matter of urgency, preferably in January or February 2025, as there is a possibility of the whole stack collapsing due to the inadequate support and potential for further leaks into the flats. The agents also state that there is urgency, as it is only after the final fix that the affected flats – by which I assume they mean the three damaged as a result of the leak – can be reinstated.

9. The managing agents state that it is the final fix work, rather than the original patch repair, that is the subject matter of the dispensation application.

10. The Applicant received a quotation for £15,251.56 (including VAT) for the work.

11. The Applicant has ticked the box to indicate that the work has been started/carried out. I am not clear whether this refers to the original temporary repair having been carried out, or whether (at least now) the final fix has also been undertaken.

12. The Applicants have written to the leaseholders explaining that they will be making this application.

Determination

13. The relevant statutory provisions are sections 20 and 20ZA of the Landlord and Tenant Act 1983, and the Service Charges (Consultation etc)(England) Regulations 2003. They may be consulted at the following URLs respectively:

    https://www.legislation.gov.uk/ukpga/ 1985/70
    https://www.legislation.gov.uk/uksi/2003/1987/contents/made

14. The Tribunal is concerned solely with an application under section 20ZA of the 1985 Act to dispense with the consultation requirements under section 20 and the regulations.

15. As a preliminary matter, the Applicant has stated that it is only the costs of the final fix that are the subject matter of this application.

However, it is possible that the original temporary repair is sufficiently proximate in both time and nature to the final fix that the two might properly be regarded as a single parcel of works. It does not appear to me to be sensible for that objection to be taken at a later time, so I consider it is appropriate, and within the flexibility allowed to the Tribunal, to construe the application as applying to both, if it is the case that the temporary repair were to be found to be part of the same parcel as the final fix.

16. Dr Pirhadi's objection is set out in an email addressed to the Tribunal and the managing agents. Mr Ranganathan and Mr Prego have adopted Dr Pirhadi's substantive objections by repeating the email in their objections. The managing agent has responded by email in identical terms to all three.

17. Dr Pirhadi's objections are set out under seven headings, which I take in turn.

18. Under the first, she objects to the Applicants having completed the works in advance of applying for dispensation. This, she suggests, demonstrates bad faith. The managing agent refers to the urgency of the work in its response to her.

19. I reject this objection. It is common practice for a landlord to apply retrospectively for dispensation under section 20ZA. Doing so does not disadvantage a leaseholder, in that whether the application is prospective or retrospective, the outcome of an application has the same effect as far as the tenant is concerned. It is also often advantageous to leaseholders for a landlord to make a retrospective application, as it can result in what may be necessary and urgent works to be undertaken timeously.

20. Dr Pirhadi's second objection is that the maintenance of the communal drainage system is the contractual responsibility of the Applicant/management company. The managing agent in its response refers to the obligation to pay costs in the service charge.

21. It is not necessary for me to construe the lease in this respect. Section 20 creates the obligation to consult by imposing a limit on a tenant's "relevant contribution" if the consultation requirements have not been complied with. "Relevant contribution" is defined in subsection (2) as the amount that a tenant "may be required under the terms of the lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works …". Thus it is a precondition to the consultation requirements that the tenant is liable for a service charge in respect of that which should be the subject of the consultation.

22. The Tribunal's power under section 20ZA is to dispense with those consultation requirements. That is, it applies where a tenant is required to pay a service charge under the lease. If a charge is not payable under the lease, the provisions of section 20 and 20ZA are irrelevant. No obligation to consult arises in the first place.

23. This does not mean that the Dr Pirhadi or any other of the leaseholders cannot challenge a service charge demand that is not payable under the lease, just that such a challenge cannot be made in the context of an application to dispense under section 20ZA.

24. The same principle applies to Dr Pirhadi's points 3 (the damage is due to a build defect, not leaseholder negligence), 4 (improper use of the reserve fund – breach of lease terms) and 5 (leaseholder membership of the management company does not create financial liability). In each case, if, as the leaseholders' contend, the costs are not recoverable, then the consultation obligations do not arise, and dispensation is irrelevant.

25. Dr Pirhadi's sixths objection is that there has been no opportunity to review alternative quotations, because only one was obtained.

26. The leading case on how the Tribunal should approach a dispensation application is *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854 (which may be obtained for free here https://www.supremecourt.uk/cases/uksc-2011-0057). The Tribunal's approach should be that a tenant must identify actual financial prejudice caused by a failure to consult, and if they are able to do so, to still grant dispensation, but to do so by imposing a condition on the landlord that they reduce the amount of the service charge payable to compensate the tenant for the financial prejudice suffered.

27. Simply asserting that the leaseholders have not had the opportunity to scrutinise alternative quotations does not of itself identify any actual financial prejudice. Accordingly, it is not open to the Tribunal to make dispensation conditional.

28. Insofar as this objection is put on the basis of a breach of the lease, then the same principle applies as set out under Dr Pirhadi's second objection.

29. The final, seventh, objection is essentially an attack on the managing agents management of the insurance of the building. Again, this is not an issue for a dispensation application.

30. I accordingly grant unconditional dispensation.

31. I emphasise again that this application relates solely to the granting of dispensation.

32. If any of the leaseholders wish to challenge either the payability under the lease of a service charge, or the reasonableness of the costs recovered through the service charge, it is open to them to apply to the Tribunal for a determination of those issues under section 27A of the Landlord and Tenant Act 1985.

Rights of appeal

33. 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 London regional office.

34. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

35. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

36. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Judge Prof Richard Percival **Date:** 31 March 2025