FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AW/LDC/2025/0650**
Property	**:**	**17 Beauchamp Place, London, SW3 1NQ**
Applicant	**:**	**London and City Capital Partners Limited**
Representative	**:**	**Alpha Browett Taylor**
Respondents	**:**	**Mr S Nakhjavani** **Mr H Kazzazz**
Representative	**:**	**None**
Type of Application	**:**	**An application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation from consultation prior to carrying out works**
Tribunal Members	**:**	**Mr I B Holdsworth FRICS**
Date and venue of Hearing	**:**	**7 May 2025 at remote venue**
Date of Decision	**:**	**8 May 2025**

DECISION

Decisions of the Tribunal

The Tribunal determines that retrospective dispensation should be given from the consultation requirements in respect of the specific repair works undertaken to the windows, parapet walls, guttering and roof coverings (defined as the "Roof Works") at 17 Beauchamp Place, London, SW3 1NQ (referred to as "the Property") as required under s.20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for the reasons set out below.

The application

1. The Applicant seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("**the 1985 Act**") to retrospectively dispense with the statutory consultation requirements associated with carrying out necessary roof repair works, **"the Roof Works"**, to **"the property"**.

2. An application was received by the First–tier Tribunal dated 27 January 2025 seeking dispensation from the consultation requirements. Directions were issued on the 21st of March 2025 to the Applicant. These Directions required the representatives for the Applicant to advise all Respondents of the application and provide them with details of the completed works.

3. The relevant legal provisions are set out in the Appendix to this Decision.

The hearing

4. This matter was determined by written submissions. There was no request from either party for a video or face to face hearing. The Applicants submitted a bundle of relevant materials to the Tribunal.

5. A written submission is received from the Respondents and the Applicants made a response on relevant matters.

The background

6. The property which is the subject of this application is a four storey dwelling with basement, ground, first and second floors. The basement and ground floors are used for retail, the first floor is allocated to office use as an office with the second floor in residential use. This Application relates to the first and second floor spaces only.

7. The Tribunal are told essential roof and ancillary works were carried out to the premises between February and May 2021. These included works

to repair leaking roof, defective windows, failed flashing and chimney pots. There was a need to erect scaffolding to carry out the works.

8. The manging agents obtained three contractor quotes for the works scheme. Aston Rose Chartered Surveyors were instructed to review the quotes to determine the scope of works and tender prices. A.N.D. Projects LLP were selected to carry out the works. The invoices at pages 173 and 174 of the bundle are submitted as the Roof Works costs. They date from 7 April 2021 and 8 June 2021 and amount to a sum of £21,864 inclusive of vat.

Tribunal Jurisdiction

9. Mr R W F Hutt FRICS of Alpha Browett Taylor has submitted a report to the Tribunal dated 24 April 2024. The report describes how the leaseholders understand the second floor flat is held on a lease subject to the provisions of the Landlord and Tenant Act 1985. There is no evidence or witness statement from the leaseholders that support this assertion. Mr Hutt relies upon the lease included in the bundle which is dated 4 December 2018 between the Messrs Nakhjavani and Kazzaz and Messrs CJ and JR Flood. This is a lease agreement made under the Landlord and Tenant Act 1954 with a demise that includes the first and second floor space. The lease restricts the "*second floor of the Property use as a residential flat only*".

10. It is the contention of Mr Hutt that a Section 20ZA dispensation is not required as the property is held as a mixed tenancy of both commercial and residential uses under the provisions of the Landlord and Tenant Act 1954. He relies upon the definition of dwelling as in the 1985 Act which states that '**Dwelling'** is defined as *'a building or part of a building occupied or intended to be occupied as a separate dwelling together with any yard garden, outhouses and impertinencies belonging to it or usually enjoyed with it'*. Mr Hutt claims the second floor flat does not satisfy this definition and is therefore not a dwelling.

11. In the alternative Mr Hutt asks that should the Tribunal find that the second floor space is held on a 1985 Act tenancy then a 20ZA dispensation from the statutory consultation for the Roof Works be granted. He contends on behalf of the Applicant that the repairs were needed urgently for the following reasons:

- Rainwater was penetrating the second floor flat and this posed a health and safety risk to the tenants.

- Any delay in rectifying the rainwater leak could have led to further damage to the building, particularly to the ceiling and roof joists areas above the flat.; and

- Further delay to undertaking the Roof Works was likely to increase the probability of consequential damage to the remainder of the property.

Jurisdiction decision

12. The Tribunal has had regard for the Court of Appeal decision **Oakfern Properties Limited and Ruddy 2006** Ewca Civ 1389 in which the definition of a dwelling was addressed. The Appeal Court in their findings said *"I can find no satisfactory reason for construing the definition of 'dwelling' in section 38 so as to exclude a tenant f merely because he is also the tenant of other parts of the building, be such other parts dwellings or common parts or some other property altogether (e.g. Commercial property)."*

13. The Tribunal has concluded that following the decision in Ruddy, it is clear that a lessee will be the tenant of a separate dwelling even if the lease includes other non-residential parts. It is acknowledged that the first and second floor hereditament does include a commercial element and associated common access areas but given the guidance in Ruddy, that does not prevent the residential use being deemed a dwelling for the purposes of section 38. Accordingly, the Tribunal conclude the exclusive residential use space allocated to the second floor of the Property is subject to the provisions of the 1985 Act. It therefore extends the Tribunal the jurisdiction to determine the 20ZA application.

Statutory Duties to Consult

14. This determination relies upon a 179 page bundle of papers which included the application, a lease, the Directions, a copy of a report from Alpha Browett Taylor and other supporting documents.

15. The obligation to consult is imposed by Section 20 of the Act. The proposed works are perceived as qualifying works. The consultation procedure is prescribed by Schedule 3 of the Service Charge (Consultation Requirements) (England) Regulations 2003 ("the Consultation Regulations"). Leaseholders have a right to nominate a contractor under these consultation procedures.

16. The Landlord is obliged to serve leaseholders and any recognised Tenants association with a notice of intention to carry out qualifying works. The notice of intention shall, (1) describe the proposed works, (2) state why the Landlord considers the works to be necessary, and (3) contain a statement of the estimated expenditure. Leaseholders are invited to make observations in writing in relation to the proposed works and expenditure within the relevant period of 30 days. The Landlord shall have regard to any observations in relation to the proposed works and estimated expenditure. The Landlord shall respond in writing to

any person who makes written representations within 21 days of those observations having been received.

17. Section 20ZA (1) of the Act provides:

> *"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."*
>
> The Supreme Court's decision in the case of **Daejan Investments Ltd v Benson and Ors [2013] 1 W.L.R. 854** clarified the Tribunal's jurisdiction to dispense with the consultation requirements and the principles upon which that jurisdiction should be exercised.

Tribunal decision on 20 ZA dispensation

18. The scheme of consultation provisions is designed to protect the interests of leaseholders, and whether it is reasonable to dispense with any requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose. 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.

19. The Tribunal needs to consider whether it is reasonable to dispense with the consultation. 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.

20. The burden is on the landlord 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.

21. The Tribunal is satisfied that the works were of an urgent nature, and they were for the benefit of and in the interests of both landlord and leaseholders in the Property.

22. The Tribunal note that the leaseholders of the first and second floor flat did not object to the grant of dispensation. The Tribunal are also told

the leaseholders originally reported the leaking roof to the managing agents and asked for remediation.

23. The Tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to any failure to consult.

24. The Tribunal are not persuaded an extended consultation period in accordance with Section 20 procedures would have produced a different commercial outcome. For this reason, the Tribunal are unable to identify any financial prejudice to the leaseholders due to the failure to consult at this time.

25. The Tribunal has taken into consideration that the leaseholders have not had the opportunity to be consulted in accordance with the timetable afforded by the 2003 Regulations. In view of the circumstances under which the works became necessary the Tribunal does not consider that the leaseholders, with a reduced opportunity to make observations and to comment on the works or to nominate a contractor, were likely to suffer any relevant prejudice.

26. The Tribunal having considered the evidence is satisfied that it is reasonable to retrospectively dispense with the consultation requirements in this case. In the circumstances, the Tribunal makes an order that the consultation requirements are retrospectively dispensed in respect of the Roof Works described in the Invoices 04540 and 04501 dated **7 April and 8th June 2021** respectively, undertaken by A.N.D. Projects LLP to remedy the defects with the defective roof covering at the Property, subject to these works falling under the Landlord's obligations under the leases of the flats.

Chairman: Ian B Holdsworth, Tribunal Judge

Dated: 8 May 2025

Appendix of relevant legislation

Section 20 of the Act

(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) a leasehold valuation 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.

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).