FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BE/LDC/2024/0231**
Property	**:**	**Various Properties at Roffo and Aylesbury Estate**
Applicant	**:**	**London and Quadrant Housing Trust**
Representative	**:**	**Mr Strelitz, Counsel, instructed by Devonshires Solicitors LLP**
Respondents	**:**	**Various Leaseholders of the Roffo and Aylesbury Estate**
Representatives	**:**	**Alison Underwood Louise Vaughan Rashed Hasan**
Type of application	**:**	**For dispensation under section 20ZA of the Landlord & Tenant Act 1985**
Tribunal members	**:**	**Tribunal Judge B MacQueen Mr S Mason, FRICS Mr Miller**
Date of hearing	**:**	**8 April 2025**
Date of decision	**:**	**12 May 2025**

DECISION

Decision of the Tribunal

(1) The Tribunal determines that it is reasonable for the Applicant to dispense with the consultation requirements in relation to the works for the reasons set out in this decision.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

Introduction

1. The Applicant sought an order pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the Act") for retrospective dispensation from the consultation requirements in respect of works to the heating and hot water system at various properties at Roffo and Aylesbury Estate. The detail of the work was set out within the works package provided by Axis (witness statement of Gary Tsui at page 150 of the bundle), and can be described as the work to replace all communally accessible Aquatherm pipework with copper pipework ("the Works").

2. The Applicant had not complied with the consultation requirements. The only question for the Tribunal was whether it was reasonable to dispense with the statutory consultation requirements.

The Hearing

3. A hybrid hearing was held so that leaseholders who wished to attend the hearing could do so by video link. The Applicant appeared and was represented by Mr Strelitz, counsel. Gary Tsui, Energy Commercial Manager for the Applicant, appeared and gave evidence. The Respondents were represented by leaseholders Alison Underwood,

Louise Vaughan (who both attended the hearing room), and Rashed Hasan (who attended by video link).

4. A bundle of documents totalling 1405 pages was had been provided for the hearing in accordance with the Directions made on 23 October 2024, which the Tribunal had read.

5. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

Agreed Facts

6. The Applicant is a registered provider of social housing and the leasehold owner of Roffo and Aylesbury Estate, which includes blocks known as Roffo Court, Arments Court, John Crane St, Hitard Court and Totters Court ("the Property"). The Property was constructed in approximately 2013.

7. There are a number of flats within the Property and each is let on a long lease. The Applicant is the landlord and the Respondents are the leaseholders of the flats. A copy of the lease for Flat 95 Roffo Court, Boundary Lane, Southwark, SE17 2FP was included at pages 43 to 78 of the bundle. The Applicant confirmed that the leases for the flats within the Property are all substantially in the same format.

Preliminary Issue

8. The Respondents made an oral application at the hearing to be able to refer to an email dated 25 February 2025. The Respondents stated that they wished to rely on this email to demonstrate that the Works had not

been successful. The Applicant asked the Tribunal to refuse to allow the email to be included.

9. The Tribunal did not allow the email to be included. The Directions made by the Tribunal had set out a clear timetable for the exchange of evidence. In any event, the matter that the Tribunal needed to determine was whether or not the Respondents had suffered relevant prejudice because of a lack of consultation. The Respondents would be able to give their own evidence at the hearing as to how the system was working, but the relevant question for the Tribunal remained whether any prejudice had been suffered because of the lack of consultation.

The Lease

10. At clause 5.3(b), the Applicant covenanted to maintain, repair, redecorate and renew and improve the pipes and drains within the Property (so far as they do not exclusively serve an individual flat and do not belong to any utility supply authority or company). The Applicant's costs for this are recoverable from the Respondents through the service charge as set out at clause 7.4 of the lease.

Relevant Law

11. Section 20 of the Landlord and Tenant Act 1985 provides that:

    (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) the appropriate 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

12. Section 20ZA of the 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.

13. The Service Charges (Consultation Requirements) (England) Regulations 2003 set out the requirement to give notice in writing to tenants of the intention to carry out qualifying works, however it is not disputed that consultation was not undertaken by the Applicant.

14. The approach to applications for dispensation was set out by the Supreme Court in *Daejan Investments Ltd v Benson* [2013] 1 W.L.R. 854. In this case it was held that the purpose of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. A tenant should suffer no financial prejudice in this way.

15. The Supreme Court held that the main, indeed normally, the sole, question for the Tribunal is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.

16. The Tribunal should consider:
    i) if dispensation was granted, would the tenants suffer any relevant prejudice; and
    ii) if so, what relevant prejudice would be suffered as a result of the landlord's non-compliance with the requirements.

17. The issue before this Tribunal is, therefore, whether dispensation should be granted in relation to the requirement to carry out statutory consultation with the leaseholders regarding the Works. As stated in the Directions order (page 134 of the bundle), this application does not concern the issue of whether any service charge costs will be reasonable or payable.

18. The legal burden is on the landlord throughout; however, the factual burden of identifying some relevant prejudice is on the tenants. Once the tenants have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it**.**

The Applicant's Position

19. The Applicant set out its position within the three witness statements of Gary Tsui, Energy Commercial Manager for the Applicant. The first statement was dated 3 July 2024 and was at pages 12 to 132 of the bundle, the second statement was dated 20 November 2024 and was at pages 139 to 146 of the bundle, and the third statement was dated 24 February 2025 and was at pages 147 to 448 of the bundle.

20. The Applicant told the Tribunal that, following a number of emergency repairs to the heating and hot water system at the Property, an intrusive survey was carried out to assess the performance of the system in order

to understand how it could be improved. The Applicant determined that the system was no longer fit for purpose and, consequently, that significant works were required.

21. The Applicant confirmed that in March 2023 it instructed Elevate Everywhere to carry out an intrusive survey of the network. Following this survey, Elevate Everywhere provided the Applicant with a scope of works. Gary Tsui confirmed in his oral evidence to the Tribunal, and at paragraph 17 of his second statement (page 143 of the bundle), that the works involved replacing the Aquatherm pipework with copper pipework. The intention was to reduce the number of leaks across the network. The Applicant confirmed that the pipework that was replaced did not extend to that within individual flats but was from the energy centre up to the front door of the individual flats.

22. The Applicant stated that it did not commence section 20 consultation as the Works were urgent. Gary Tsui confirmed at paragraph 23 of his third statement (page 151 of the bundle) that the Applicant identified that the Works were required in April 2023, and a quotation was obtained on 24 November 2023. During the period April 2023 to November 2023, the Applicant stated that it carried out further investigation to narrow down the issues and identify the precise scope of the works. Elevate Everywhere prepared a condition report dated 25 October 2024 and the Works commenced in January 2024. Gary Tsui's evidence was that the consultation was not undertaken as the Applicant had wanted to start the Works urgently because of the risk of the system failing during the winter months with the resultant impact this would cause to the health and safety of residents.

23. The Applicant told the Tribunal that even if it had carried out a consultation with the Respondents, this would not have changed the procurement process. At paragraphs 14 and 15 of the third witness statement of Gary Tsui (page 149 of the bundle), he confirmed that following a competitive tender process, Axis Europe Plc (Axis) had already been appointed as the designated delivery partner for the region.

Therefore, following a review by the Applicant of the condition report of 25 October 2023 prepared by Elevate Everywhere, this was directed to Axis. Axis then invited their subcontractors to tender for tender for the Works and issued a quotation based on the best price submitted. On 24 November 2023, Axis provided a works package that replaced all the communally accessible Aquatherm pipework with copper. The Applicant confirmed that this process would have been followed whether or not consultation had taken place.

24. The Applicant's application for dispensation was dated 8 July 2024. Gary Tsui confirmed at paragraph 22 of his second statement (page 144) that this delay was because of an administrative delay with collating information and documents for the application in view of the extent of the Works required.

25. It was the Applicant's position that it had kept the Respondents informed and they had been notified of the Applicant's intention to make an application to dispense with the requirements of consultation in February 2024. Additionally, at paragraph 10 of his third statement (page 148 of the bundle), Gary Tsui's confirmed that the Applicant had carried out residents' meetings on 28 March 2023, 11 July 2023, and 11 October 2023 and had shared information about the works.

26. It was the Applicant's position that, given the severity and urgency of the Works, it had not been possible to complete a statutory consultation as this consultation would have taken a minimum of two and a half months to complete. The Applicant therefore sought dispensation from the consultation requirements.

The Respondents' Position

27. The Respondents' position was that very clear and substantial prejudice to them could be demonstrated as a direct result of the Applicant's failure to consult. The written representations made by the Respondents were set out at pages 453 to 1280 of the bundle. Many of the representations

used the proforma template form provided by the Tribunal which made broadly similar comments; however, each Respondent also added their own observations. In addition to the written submissions, the Tribunal heard orally from Louise Vaughan, Alison Underwood and Rashed Hasan on behalf of the Respondents.

28. The Respondents stated that they had been prejudiced by the Applicant's failure to consult properly as follows:

    a. The lack of consultation meant that the Respondents had been unable to scrutinise the Works, comment on their scope and had not been able to explore alternative proposals. The Respondents had been denied the opportunity to put forward options such as doing nothing or including the pipework within individual flats as part of the Works.

    b. The Respondents had been denied the opportunity to scrutinise, ask questions, and challenge whether it was necessary for the Works to be completed. The Respondents noted particularly that since a new supplier had been brought in to manage the heating and hot water system at the Property, they had noticed improvements to the system. In light of this, taking no action and continuing with a programme of reactive maintenance would have been a much cheaper option, but there had been no opportunity for them to put this forward because of the lack of consultation.

    c. The Respondents had been unable to put forward alternatives, in particular whether the Works should extend to high risk areas only or whether there was other work that could have been completed to the heating and hot water system.

    d. The Respondents had been unable to question why work was urgent in April 2023 and why work was not done before, including during any warranty period. Further, the Respondents had not

been able to raise and consider whether any of the issues with the system had been caused by the way the Applicant maintained the system.

e. The Respondents had been unable to question whether the system was fit for purpose given that the building was only completed in 2013.

f. The Respondents had been unable to request a cost-benefit analysis to look at the effect of changing to copper pipes and, specifically, to understand if the change to copper pipes would resolve the issues with the system, and whether the Works were cost effective. Further, the Respondents had been unable to raise whether joining old plastic and new copper pipes would create a new problem.

29. The Respondents stated that the Works had not been adequate and this was demonstrated by the fact that there were still leaks occurring at the Property.

30. It was therefore the Respondents' position that they had been prejudiced because there was real doubt that the scope of the Works was appropriate. The lack of consultation meant that alternative options had not been considered. The Respondents stated that they had been caused financial prejudice because the scope of the Works had not been sufficiently tested so that only appropriate work was completed.

31. Further, the Respondents questioned the timing of the Works. They noted that in October 2018 there had been a much more significant leak, which had necessitated the fire brigade attending the Property, as compared to the one in April 2023. The Respondents stated that, had they been consulted, they would have questioned why the Works were being completed urgently now, particularly at a time when work to the roof was also being completed.

32. The Respondents therefore asked that the application for dispensation be refused, meaning that the Applicant would only be able to recover the statutory maximum of £250 per leaseholder for the Works.

Applicant's Reply – Relevant Prejudice

33. It was the Applicant's position that the Respondents had not established any relevant prejudice. Specifically, the Applicant stated that the Respondents had not obtained an expert report and had not produced any evidence to show that the Works the Applicant had completed were unjustified. It was the Applicant's position that the consultation requirements required the landlord to "have regard" to any observations made by lessees in response to the section 20 notices and statement of estimates, but ultimately it was the landlord who decided the work that needed to be done, when this was to be done, who was to do the work and the amount that was to be paid for it.

Tribunal Decision

34. The Tribunal does not accept that the Respondents have suffered relevant prejudice because of the failure to consult. The Applicant used Axis to tender for the work and that process would not have changed had the consultation taken place.

35. Turning to the Respondents' assertion that they had not been able to challenge the scope of the work, the Tribunal does not find that this amounts to relevant prejudice on the facts of this case. The Tribunal accepts the Applicant's evidence that, in March 2023, the Applicant instructed Elevate Everywhere to complete an intrusive survey of the heating and hot water system. Elevate Everywhere completed a report dated 14 April 2023 which identified problems with the system and recommended work to replace pipework to reinforce the distribution system in order to reduce the likelihood of further issues with leaks. The

Applicant's evidence, which the Tribunal accepts, was that this report did not state that the system needed replacing. The Tribunal accepts that the Applicant used this report to form the basis of the Works.

36. Whilst the Respondents suggested other options that they believed the Applicants should have considered, they did not provide any evidence, particularly any expert evidence, to the Tribunal to show how the Works that were completed caused them relevant prejudice. The Respondents suggested that the Applicant could have taken no action at this time and allow the new contractors to stabilise the system; however, both parties accepted that the system had not been working effectively. The Tribunal therefore accepts the Applicant's evidence that they had needed to take action, as continually completing repairs was not in anyone's interest, particularly as the cost of these repairs would form part of the Respondents' service charge. The options put forward by the Respondents amounted to suggestions and did not demonstrate how not following these options had resulted in the Respondents being caused relevant prejudice.

37. It is the landlord who decides the works that need to be completed and the amount that is to be paid for them. The Applicant's evidence to the Tribunal was that the Works were required given the significant issues with the reliability of the heating and hot water system at the Property.

38. Regarding the Respondents' position that had they been consulted they would have wanted an explanation as to why a claim was not pursued by the Applicant on the basis of warranties, and would have challenged why remedial work was not completed before, the Tribunal accepts the Applicant's position that, even if the Respondents had given these comments, there would be no prejudice as the situation would not have changed and the Works would have been completed. The Tribunal therefore finds that the Respondents have not suffered relevant prejudice through being unable to make comments about warranties or insurance.

39. In light of the above, the Tribunal determines that it was reasonable for the Applicant to dispense with the consultation requirements in relation to the Works for the reasons set out in this decision.

40. The Respondents have the statutory protection of section 19 of the Landlord and Tenant Act 1985 which provides the Respondents with the right to challenge the actual costs incurred. If appropriate, this would require a separate application to be made to the Tribunal under section 27A of the Landlord and Tenant Act 1985. Whilst the Tribunal has determined that there should be dispensation from consultation in this case, the Tribunal has not made any finding on the payability and reasonableness of the scope and cost of the Works.

Section 20C Landlord and Tenant Act 1985

41. The Respondents made an application pursuant to section 20C of the Act that the Applicant's costs for this application are not to be added to the service charge.

42. The Applicant asked the Tribunal not to make an order under section 20C of the Landlord and Tenant Act 1985 because the Respondents had made contradictory representations in that they had submitted that not undertaking any work to the system was an option, yet stated that the system was failing.

43. The Tribunal finds that it is just and equitable to make an order that the Applicant's costs are not passed onto the Respondents through the service charge. The Applicant has applied for dispensation and has come to the Tribunal for an order to be made. The Respondents' have exercised their right to make representations to the Tribunal. In particular, the Tribunal notes that, whilst the Applicant stated that the Works were urgent, the chronology set out by the Applicant showed that the intrusive survey was conducted in April 2023; however, the Works

did not commence until January 2024 and the application for dispensation was not made to the Tribunal until July 2024. The Tribunal finds that in all the circumstances it is just and equitable for an order under section 20C to be made.

Name: Judge Bernadette MacQueen Date: 12 May 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).