FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/LDC/2024/0670**
Property	**:**	**22, Marsh Wall, London E14 8JH**
Applicant	**:**	**Adriatic Land 5 Ltd.**
Representative	**:**	**Ms. S. Rai of counsel, instructed by J B Leitch Solicitors**
Respondents	**:**	**The Residential Long Leaseholders of 22, Marsh Wall, London E14 8JH**
Representative	**:**	**Not Represented**
Type of Application	**:**	**For the determination of an application for dispensation from the statutory consultation requirements**
Tribunal Members	**:**	**Judge S.J. Walker** **Tribunal Member Mr. S. Wheeler MCIEH, CEnvH**
Date and venue of Hearing	**:**	**15 April 2025** **10, Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**12 May 2025**

DECISION

Decision of the Tribunal

The Tribunal determines that the statutory consultation requirements shall be dispensed with in respect of the following works at 22, Marsh Wall, London E14 8JH;

- **(a) to meet weekly on site with contractors and liaise with the site team for access and isolation purposes;**
- **(b) to disconnect failed boiler shells, including gas and water;**
- **(c) to use a specialist lift to shift and remove the failed boiler shells;**

(d) to CPC flush the affected pipework and new boiler shells; and
(e) to commission and install new boiler shells utilising the existing retained burners.

Reasons

The application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") dispensing with the statutory consultation requirements which apply by virtue of section 20 of the 1985 Act in respect of works to permanently remediate and/or replace failed boilers at 22, Marsh Wall, London E14 8JH ("the property").

2. The application was made on 4 December 2024 and stated that it was being made because two of the four boilers serving the premises had failed and a third was leaking.

3. Directions were made on 16 January 2025 by Judge Tueje. They required the Applicant to send copies of the application and the directions to the leaseholders and to display a copy of them in a prominent place in the common parts of the property. The Tribunal is satisfied that this was done.

4. The directions provided that those leaseholders who opposed the application were to complete a reply form and return it to the Tribunal by 20 February 2025.

5. The directions further provided that the application would be determined on the papers in the week commencing 13 March 2025 unless by 6 March 2025 any party requested a hearing.

6. The Tribunal received requests for a hearing from 10 leaseholders and so a hearing was arranged.

7. The relevant statutory provisions are set out in the Appendix to this decision.

8. 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.

9. The Applicant prepared a bundle consisting of 355 pages. References to page numbers throughout this decision are to the page numbers appearing in this bundle.

10. At the hearing the Tribunal also had a skeleton argument prepared by Ms. Rai of counsel on behalf of the Applicant together with a number of authorities.

The Hearing

11. The Applicant attended the hearing and was represented by Ms. Rai. None of the Respondents attended. The Tribunal considered rules 3 and 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. It was satisfied that those leaseholders who had objected to the application had been notified of the hearing. It was also satisfied that it was in the interests of justice to proceed in their absence and that it was fair and just to do so. The issues involved were clear, as were the Respondents' objections. There was nothing in the evidence which suggested that any other significant evidence which may be likely to affect the decision was missing.

The Background

12. The property comprises four high rise residential apartment blocks comprising 650 residential flats and a large commercial unit.

The Lease

13. Evidence of the Applicant's title is at page 31.

14. A copy of a sample lease was provided to the Tribunal (pages 106 – 156). The Tribunal was satisfied that it included the usual obligations on the tenant to pay a contribution towards the expenses incurred by the landlord in performing its obligations under the lease. Those obligations include an obligation to keep in repair and, when the landlord reasonably considers it necessary, to renew or replace the communal boiler plant and equipment and related pipework. (See paragraph 1 of Part I of Schedule 4 (page 131), paragraph 1.6 of Part I of Schedule 5 (page 138) and paragraph 1 of Part II of Schedule 5 (page 139).

The Issues

15. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. The Tribunal is not concerned with the issue of whether any service charge costs or legal costs will be reasonable or payable.

The Applicant's Case

16. The Applicant's case is set out in their statement of case (pages 22 to 28), their statement of case in reply to the Respondents' objections (pages 338 to 345) and their skeleton argument. Put simply, their case is as follows. Two of the four boilers which serve the property have failed and a third was leaking. This is confirmed by a report produced by BMCG Ltd, which begins at page 158. They argue that the works are clearly necessary and need to be completed as a matter of urgency. They further argue that the Respondents have not shown that the granting of a dispensation would give rise to any relevant prejudice to them.

17. The required works are specified at paragraph 2.1 of the Applicant's skeleton argument. According to the Applicant the estimated cost of these works is in the region of £200,000 plus VAT (see para 2.2 of the skeleton argument).

The Respondents' Case

18. The Tribunal has received responses from fourteen leaseholders at the property, the tenants of flats 206, 209, 607, 701, 1107, 1404, 1505, 1601, 1907, 2001, 2204, 3307, 4202, and 52A Belgrave Court. These are at pages 254 to 332.

19. In none of the objections is it suggested that works to repair and/or replace the boilers are not required, though a frequent complaint is that there has been a period of inaction by the Applicant in addressing the problems with the boilers. There are also representations from some objectors, in particular the leaseholder of flat 701, that alternative long-term solutions, such as hydraulic separation, may be a more cost-effective long-term solution (see page 269). However, it should be noted that this alternative, which is referred to in the BMCG report itself, is considerably more expensive than the works for which dispensation is being sought.

20. Many, if not all, of the objectors complain that they have not been able to participate in a proper consultation exercise and argue that this, in itself, amounts to a relevant prejudice. Objection is raised to the fact that a notice of intention to do the works was not issued until after the Applicant had appointed a contractor to carry out the works and that, therefore, the Respondents had no opportunity to question what was being proposed or to suggest an alternative contractor.

21. However, none of the Respondents has put forward any costed proposals for alternative works or any alternative quotations in respect of the works in fact undertaken.

22. Another frequent observation in the objections is that the Applicant should be required to pursue warranty or other claims against those who installed the now failed boilers. There is also a request for the Tribunal to cap the recoverable costs.

The Tribunal's Decision

23. The first question is whether or not the costs of the works are such that the question of consultation becomes relevant. Ms. Rai informed the Tribunal that the minimum charge to any leaseholder would be £306, which is above the statutory threshold, so the issue of dispensation does indeed arise.

24. There is no doubt that the Applicant has not complied with the statutory consultation requirements. Indeed, what it has done falls very far short of what is required. There is also evidence of considerable delay by the Applicant in addressing the problems with the boilers.

25. The evidence shows that the first boiler failed in August 2023 and the second in November 2023 (page 164). Investigation works were carried out by Hamworthy on 13 February 2024 (page 181) and a report from them was produced on 28 March 2024 (page 179). Despite this, the Applicant's case was

that they were not informed about the boiler failures until June 2024 (see para 4.4 of the skeleton argument).

26. The Applicant then commissioned the BMCG report, which identified the works required. On 6 September 2024 the Applicant appointed Jaguar Building Services to undertake the identified works (see para 13 of the Applicant's statement of case at page 24). It was, though, not until 26 November 2024 that the Applicant sent a notice of intention to the Respondents. The Applicant acknowledges that this truncated the period for observations and omitted the reference to contractor nominations as the decision had already been taken to appoint a contractor (see para 4.10 of the skeleton argument and page 200).

27. There is no doubt that this falls very far short of what the statutory consultation provisions require.

28. However, it is not enough for the Respondents to show that there has been a failure to carry out the required consultation. As is made clear by the Upper Tribunal in the case of Holding & Management (Solitaire) Ltd. -v- Leaseholders of Sovereign View [2023] UKUT 174 (LC), the consultation requirements are not an end in themselves and can be dispensed with if there is no relevant prejudice to the leaseholders (para 21). In other words, the mere fact that a leaseholder has not been able to participate in a consultation process is not, of itself, a bar to the granting of a dispensation.

29. Whilst there is a legal burden on the Applicant to show that a dispensation should be granted, there is a factual burden on the Respondents to identify some relevant prejudice that they would or might have suffered if the dispensation is granted.

30. The leading case of Daejan Investments Ltd. -v- Benson [2013] UKSC 14 makes it clear that the purpose of the consultation requirements is to protect tenants from (a) being required to pay for unnecessary works and (b) being required to pay more than they should for those works.

31. In this case there is little doubt that the works are necessary. The evidence clearly shows that the boilers have failed and/or are defective. Whilst an alternative solution has been suggested, this appears to be more expensive, and the Respondents have provided insufficient evidence to establish that this alternative – which was identified in the Applicant's own report – should have been adopted in preference to the works in fact carried out. In the view of the Tribunal the Respondents have not met the evidential burden of showing that the works proposed by the Applicant are inappropriate.

32. None of the Respondents has set out what they would have proposed if a consultation exercise had been conducted. There is no evidence of any alternative quotes or contractors and no evidential basis for the assertion made by some of the Respondents that the costs charged by the Applicant's chosen

contractor are excessive. At best there is mere speculation that it might have been possible to have the works done more cheaply.

33. In the view of the Tribunal the Respondents have also failed to meet the evidential burden of showing that the costs of the proposed works are too high.

34. The remaining objections from the Respondents are not relevant to the issue which the Tribunal has to determine. Whilst questions of historic neglect, delay by the Applicant, and the pursuit of warranty claims may be relevant to the question of whether or not the costs are reasonably payable for the purposes of an application under section 27A of the 1985 Act, they are not relevant to the question of whether or not the Respondents have suffered relevant prejudice.

35. In all the circumstances and for the reasons set out above the Tribunal was satisfied that it is reasonable to dispense with the consultation requirements unconditionally.

Name: Judge S.J. Walker **Date:** 12 May 2025

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise

Section 20

(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.

(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.]

Section 20ZA

(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.

(2) In section 20 and this section –
  "qualifying works" means works on a building or any other premises, and
  "qualifying long term agreement" means (subject to subsection (3) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –
  (a) if it is an agreement of a description prescribed by the regulations, or
  (b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord
  (a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
  (b) to obtain estimates for proposed works or agreements,
  (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
  (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
  (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements

(6) Regulations under section 20 or this section
  (a) may make provision generally or only in relation to specific cases, and
  (b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.