FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**(1) LON/00AH/LDC/2021/0058** **(2) LON/00AH/LDC/2021/0060**
HMCTS Code	**:**	**P: PAPER REMOTE**
Property	**:**	**1-49 Park Hill Court Addiscombe Road Croydon CR0 5PG/J**
Applicant	**:**	**Park Hill Court (Croydon) RTM Limited, represented by Warwick Estates**
Respondent	**:**	**Leaseholders of the property (list attached to application)**
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	**:**	**7 June 2021**

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 the subject of both applications.

Procedural

1. The landlord submitted two applications for dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 and the regulations thereunder. The applications are:

    (i) The asbestos application, dated 14 October 2020; and

    (ii) The fire stopping application, dated 19 February 2021.

2. The Tribunal gave directions on 26 March 2021 joining the two applications. 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 applications, 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 30 April 2021.

3. The Applicant confirmed that the relevant documentation had been sent, and posted as notices, as required by the directions.

4. No response from a leaseholder has been received by the Tribunal.

The property and the works

5. The property is a large brick built building, which it is said was converted into flats in the 1950s. The fire risk report (see below) suggests that it was constructed in the 1930s. It comprises forty-nine flats.

The asbestos application

6. A central boiler provides hot water and heating for all the flats in the block.

7. An asbestos survey was carried out by consultants in relation to the boiler room at the property and a corridor leading to the boiler room.

The survey identified high and medium asbestos materials in pipe insulation, an insulation panel in a door and in dust in the boiler room (in addition to some lower risk asbestos elsewhere). There was some ambiguity in the laboratory results for contamination, but the consultants took the view that it was appropriate to assume the more serious results were correct. The report is dated "September 2020". An Asbestos Register is annexed to the report.

8. As a result of the recommendations in the report, the applicant decided to remove the higher risk asbestos. This requires that the boilers be turned off for five days. At the time the application was made, the works had not been commenced. The applicant sought dispensation in order that the works could be carried out before the weather became colder, in addition made the general point that the removal of dangerous asbestos was inherently urgent.

9. No estimates for the cost of the work have been provided.

The fire stopping application

10. In December 2020, consultants carried out a fire risk assessment. The report makes a number of findings and recommendations, but the key issue relates to compartmentalisation. The report indicated that there was poor compartmentalisation in a number of areas in the building, including in the hallway riser cupboards. The impact of these faults is that if a fire broke out, it would spread more easily and more rapidly. The report concluded that, while the likelihood of fire was "medium", characterised by normal fire hazards for the type of building, subject to appropriate controls, the potential consequences for the safety of the occupants in the event that there was a fire was "Extreme harm – significant potential for serious injury or death of one or more occupants".

11. The applicant argues that these works are urgent in order to protect the occupants in the event of fire, and that a dispensation was necessary "to ensure quotes can be obtained and works instructed as quickly as possible".

12. No estimates for the cost of the work have been provided.

Determination

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

14. In the first place, I accept that in both cases, there is at least a degree of urgency. In relation to the asbestos application, if the urgency was only attributable to the onset of colder weather last autumn, that is now

clearly not a factor. The removal of a hazard such as high risk asbestos nonetheless suggests at least some urgency. Whether, if that were the only consideration, it would be sufficient to justify dispensation from the important protections provided by the consultation requirements in section 20 might, however, be doubted.

15. The clear indication of risk in relation to the fire stopping works is in a different category of urgency.

16. Secondly, however, it is a matter of serious concern that no cost estimates of any kind have been provided to the Tribunal, or, more importantly, to the leaseholders. As I make clear below, given that there has been no indication of opposition from any leaseholder, the Tribunal is bound to grant a dispensation. But it is, perhaps, problematic that such dispensation must be forthcoming even if the leaseholders have been given no indication at all of the scale of costs that might be involved. It would be quite understandable if leaseholders did not raise a question of prejudice when informed of un-costed works in broad outline, where they might do so if estimates of substantial costs were given. I have no more idea than the leaseholders of the extent of costs relating to these two applications, but it is not impossible that they will be substantial.

17. Nonetheless, as stated, no responses have been received from any of the leaseholders. It is therefore clear that no leaseholder has sought to claim any prejudice as a result of the consultation requirements not having been satisfied. Where that is the case, the Tribunal must, quite apart from any question of urgency, as indicated above, allow the application: *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854.

18. This application relates solely to the granting of dispensation. If the leaseholders consider the cost of the works to be excessive or the quality of the workmanship poor, or if costs sought to be recovered through the service charge are otherwise not reasonably incurred, then 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.

Name: Judge Prof Richard Percival **Date:** 7 June 2021

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 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.

(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 which shall be subject to annulment in pursuance of a resolution of either House of Parliament.