



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

<b>Case Reference</b>	:	<b>LON/00AY/LDC/2022/0214 [PAPERREMOTE]</b>
<b>Property</b>	:	<b>Listello, Greenaway Apartments, Bloore House &amp; Newberry Mews, 37 Bedford Road, London, SW4 7EF</b>
<b>Applicant</b>	:	<b>Listello Buildings Management Company Limited</b>
<b>Representative</b>	:	<b>DJC Property Management Limited</b>
<b>Respondent</b>	:	<b>The long residential leaseholders of The Property named in the schedule attached to or mentioned in the application</b>
<b>Representative</b>	:	<b>-</b>
<b>Type of Application</b>	:	<b>Application for the dispensation of consultation requirements pursuant to S. 20ZA of the Landlord and Tenant Act 1985</b>
<b>Tribunal Members</b>	:	<b>Judge Professor Robert Abbey Ms Sarah Phillips MRICS</b>
<b>Date and venue of Hearing</b>	:	<b>19 December 2022 by a paper- based decision</b>
<b>Date of Decision</b>	:	<b>23 December 2022</b>

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act).
- (2) The reasons for our decisions are set out below.

## **The applications**

1. In relation to the several flats at **Listello, Greenaway Apartments, Bloore House & Newberry Mews, 37 Bedford Road, London, SW4 7EF** (“the properties”) the applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act, (see the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987), Schedule 4.)
2. The Applicant has applied for dispensation from the statutory consultation requirements in respect of urgent works to repair the heating and hot water system within some of the properties. The pipework is blocked and needs to be replaced. A section 20 consultation process was completed in 2020 in relation to power flushing the pipes. However, it was later established that replacement piping was needed instead. The application is said to be urgent due to the need for heating and hot water to be provided to these properties, during the winter months
3. The estimated cost of the works for the pipework is £29,520. This quotation has been provided by Watkins Plumbing Services. The application is said to be urgent due to the need for heating and hot water to be provided to these properties, during the winter months. There are a handful of properties within the development which are unable to use their HIU’s currently as a result of blocked pipework. Therefore, in order to not cause any further delays and restore heating to those affected properties at the earliest opportunity, the applicant has made this application to the tribunal for dispensation.
4. The relevant legal provisions and rules and appeal rights are set out in the Appendix and Annex to this decision.

## **The hearing**

5. This has been a remote hearing on the papers which has been consented to or not objected to by the parties. The form of remote hearing was classified as P (Paper Remote). A face-to-face hearing was not held because no one requested the same or it was not practicable

and all issues could be determined in a remote hearing on paper. The documents that the Tribunal was referred to are in the electronic bundle supplied by the applicant.

6. The Tribunal did not consider that an inspection was necessary. The Tribunal was able to access the detailed and extensive paperwork in the trial bundle that informed their determination. In these circumstances it would not have been proportionate to make an inspection given the current circumstances and the quite specific issues in dispute.
7. The tribunal had before it a trial bundle of documents prepared by one of the parties in accordance with previous directions. The trial bundle comprised electronic versions of copy deeds, contracts, reports documents, letters and emails.

### **The background and the issues**

8. The property consists of several leasehold flats. The individual residential properties are let on long leases and are all in the same format and include all the same terms, provisions covenants and conditions.
9. The respondent/tenants hold long leases of the individual properties which require the applicant to provide services and the tenant to contribute towards their costs by way of a service charge. The tenants must pay a percentage or share defined in their leases for the services provided.
10. The application to be considered by the tribunal is in respect of urgent works to repair the heating and hot water system within some of the properties. The application was made to seek dispensation under section 20ZA of the 1985 Act from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act regarding works to be carried out to the properties. With regard to the grounds for seeking dispensation the applicant stated in the application that the works were in respect of urgent works to repair the heating and hot water system within some of the properties to ensure hot water and heating during the winter months.
11. The matters in issue now fall to this Tribunal to determine as more particularly set out below.

### **The dispensation issues and decision**

12. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements in respect of urgent works to replace pipework to make sure the heating and hot water systems are working in all properties. It should be noted

that this application does not concern the issue of whether or not service charges will be reasonable or payable.

13. Having considered all of the copy deeds documents and legal submissions provided by both parties, the Tribunal determines the issue as follows.
14. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
15. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by such an application as is this one before the Tribunal. Essentially the Tribunal have to be satisfied that it is reasonable to do so.
16. The works carried out or to be carried out by the applicant are in respect of urgent works to repair the heating and hot water systems within some of the properties. Due to the emergency nature of the works no consultation process occurred or will occur prior to the commencement of the pipework replacement or repair works.
17. The Tribunal did not receive any objections sent directly to it but objections were disclosed in the trial bundle supplied to the Tribunal in accordance with Tribunal Directions. The Tribunal took time to carefully consider these objections. The tenant of flat 10 Bloore House objected as he felt that the applicant had not properly consulted on the proposed works. He also said that “To clarify further, I am not opposed to remedial works being carried out, I am opposed to the applicant wanting to bypass their legal obligations to consult us.”
18. Additionally, and not included in the Trial Bundle a second objection was subsequently made by Peabody as head lessee. They said that “While we understand the works are necessary to ensure heating and hot water to our properties, we would question if the cost of these works are a reasonable cost for leaseholders to bear.” Peabody then set out why this was so. They went on to observe that “We are also not clear if this was due to initial defects from time of build or due to lack of maintenance by the management company. We would suggest that these points are thoroughly investigated and the management company applies to the tribunal for a pre-determination on whether the costs are a reasonable one for leaseholders to bear before trying to recover costs from leaseholders.” Accordingly, the Tribunal noted that Peabody accepted that the works were necessary but took issue on reasonableness and payability. In that regard, please see paragraph 12

of this decision. The applicant also confirmed to the Tribunal that they had written directly to Peabody to address these further issues.

19. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14 by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.
20. The court came to the following conclusions:
  - a. The correct legal test on an application to the Tribunal for dispensation is:  
“Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord’s failure to comply with the requirements?”
  - b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.
  - c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord’s failure to comply.
  - d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.
  - e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
  - f. The onus is on the leaseholders to establish:
    - i. what steps they would have taken had the breach not happened and
    - ii. in what way their rights under (b) above have been prejudiced as a consequence.
21. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the lessor and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above. In this context it should also be remembered that only one leaseholder and subsequently Peabody appears to have lodged an objection to this application. In neither case was the Tribunal persuaded that dispensation should be denied bearing in mind that this application does not concern the issue of whether or not service charges will be reasonable or payable.

22. The tribunal was of the view that they could not find significant relevant prejudice to the tenants/respondents. The tribunal accepted the applicant's submission in this regard was sufficient to enable the Tribunal to make a finding allowing dispensation given the emergency nature of the works and the obvious need to try to keep residents and flats as safe and warm as possible and to keep the hot water systems operating comprehensively and to ensure it is available to all the tenants.
23. The applicant believes that the works are vital given the nature of the problems reported. The applicant also says that in effect the tenants of the properties have not suffered any prejudice by the failure to consult. On the evidence before it the Tribunal agrees with this conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application. It must be the case that pipework replacement and repair works should be carried out as a matter of urgency to ensure the safety and convenience of all leaseholders and hence the decision of the Tribunal.
24. Rights of appeal available to parties to this dispute are set out in an Annex to this decision.
25. The applicant shall be responsible for formally serving a copy of the tribunal's decision on all leaseholders. Furthermore, the applicant shall place a copy of the tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website, (if any), within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. Copies must also be placed in a prominent place in the common parts of the property. In this way, leaseholders who have not returned the reply form may view the tribunal's eventual decision on dispensation and their appeal rights on the applicant's website.

**Name:** Judge Professor Robert  
Abbey

**Date:** 23 December 2022

## **Appendix of relevant legislation and rules**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 20ZA Consultation requirements**

(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.

....

(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.

#### **Section 27A**

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to

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(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs,

maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Annex - Rights of Appeal**

1. 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.
2. 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.
3. 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.
4. 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.