



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

**Case reference** : **LON/00BK/LDC/2022/0079**

**HMCTS code  
(paper, video,  
audio)** : **P: PAPERREMOTE**

**Property** : **Flats 1-31, 1 Hyde Park Square, London,  
W2 2JZ**

**Applicant** : **THE CHURCH COMMISIONERS FOR  
ENGLAND**

**Representative** : **Knight Frank LLP**

**Respondents** : **THE LEASEHOLDERS AS IDENTIFIED  
IN THE SCHEDULE ATTACHED TO  
THE APPLICATION**

**Representative** : **[none]**

**Type of application** : **Application for dispensation from  
consultation requirements  
Section 20ZA Landlord and Tenant Act 1985**

**Tribunal member** : **Judge Shaw**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **18<sup>th</sup> July 2022**

---

**DECISION AND REASONS**

---

**Decision**

(1) The requirements of section 20 of the Landlord and Tenant Act 1985 are hereby dispensed with in respect of works for the replacement of the water tank at the property.

(2) In granting dispensation in respect of the works, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

## **Reasons**

### **The Application**

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 ('the Act'), for dispensation from the requirements to consult in advance of qualifying works as set out in section 20 of the Act.

### **Procedural History**

2. This has been a remote determination on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because all the issues could be determined on the papers provided.
3. The documents that the Tribunal were referred to were provided in a bundle comprised of 53 pages. References to the bundle appear in bold square brackets below, e.g. **[1]**.
4. The Applicant made the Application on 5<sup>th</sup> April 2022. This is a "retrospective" application, since, by the date of the application the works had already been completed ( on 25<sup>th</sup> February 2022). Directions were given on 15 September 2021 **[15-19]**, which included a requirement that the applicant notify the leaseholders of the application and the Directions, by delivering to them copies by email, hand delivery or first-class post. The applicant was also required to display the documents in a prominent place in the communal areas.
5. Leaseholders had until 22<sup>nd</sup> June 2022 to provide any notification to the Tribunal that they opposed the application, and to provide to the Applicant their written reasons.
6. No leaseholders have responded to the Tribunal, and no responses or objections have been notified by the Applicant to the Tribunal.

### **Brief Facts**

7. The property is a 9 storey residential block comprising 31 relevant apartments for the purposes of this application.
8. The Applicant seeks retrospective dispensation from the consultation requirements in respect of works to replace the water tank provision at the property. The old tank is said to have suffered from a series of leakages and was no longer serviceable. The works were completed by Hydrocert Limited who delegated work to subcontractors identified in the bundle, and the costings for all the separate works are also identified in the bundle. **[21-28]**.

9. The works were commissioned on 12<sup>th</sup> January, commenced on 2<sup>nd</sup> February and completed on 25<sup>th</sup> February 2022. [11].
10. The works are said to have been urgent, as there is only one tank serving the whole building and immediate attention was required to avoid repeated flooding in the tank room at the Property. Formal consultation was not possible given the urgency, but all leaseholders received notification by e-mail of the disruption to be caused whilst the works were being carried out. Notices were also affixed within the Property [11].

## **The Law**

11. Section 20ZA of the Act states that the Tribunal may determine that there should be dispensation from the consultation requirements set out in section 20 of the Act in respect of any qualifying works or qualifying long term agreement when '*it is satisfied it is reasonable to do so*'.
  - a) The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
  - b) The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
  - c) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - d) The Tribunal has power to grant a dispensation as it thinks fit, including on terms, provided that any terms are appropriate.
  - e) The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
  - f) The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
  - g) The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
12. In *Daejan Investments Ltd v Benson* [2013] UKSC 14, the Supreme Court set out the following factors to be taken into account:
  - a) The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
  - b) The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
  - c) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - d) The Tribunal has power to grant a dispensation as it thinks fit, including on terms, provided that any terms are appropriate.
  - e) The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
  - f) The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
  - g) The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.

- h) The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- i) Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

## **Decision**

- 13. There has been no objection or other representation received by any leaseholder. There has therefore been no assertion of relevant prejudice.
- 14. In light of the facts, the Tribunal considers it reasonable retrospectively to dispense with the section 20 requirements in respect of the works carried out concerning the replacement of the water tank and associated works referred to in the bundle.
- 15. In so determining, the Tribunal makes no decision on any question of the payability or reasonableness of the quantum of costs to be recharged to leaseholders through the service charge.

**Name:** Judge Shaw

**Date:** 18<sup>th</sup> July 2022

### 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).