FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AN/LDC/2021/0279 [PAPERREMOTE]**
Property	**:**	**278-282 Wandsworth Bridge Road, London, SW6 2UA**
Applicant	**:**	**Amek Investments Limited**
Representative	**:**	**Iram Nabi - HML Group**
Respondents	**:**	**The Leaseholders listed in the Application being Mr John Mann (278), Miss Parkes (280) and Mr John House (282)**
Representative	**:**	**-**
Type of Application	**:**	**Application for the dispensation of consultation requirements pursuant to S. 20ZA of the Landlord and Tenant Act 1985**
Tribunal Member	**:**	**Judge Professor Robert Abbey**
Date and venue of Hearing	**:**	**1 February 2022 by a paper-based decision**
Date of Decision	**:**	**1 February 2022**

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 six flats at **278-282 Wandsworth Bridge Road, London, SW6 2U** ("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.) The landlord/applicant has applied for dispensation from the statutory consultation requirements in respect of a leaking roof. Due to heavy rain, this has leaked into one of the flats, (278). It is said to have caused a lot of damage and this work requires external repairs, including scaffolding. The estimated cost of the works is £2250.00 and VAT. It is said that the freeholders and the leaseholders have been advised of the repair works and of this application. The application is said to be urgent as the water ingress may cause further damage to the properties.

2. The relevant legal provisions and rules and appeal rights are set out in the Appendix and Annex to this decision.

The hearing

3. 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 it was not practicable given the COVID-19 pandemic (and the need for social distancing) and 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.

4. In the context of the COVID-19 pandemic and the social distancing requirements the Tribunal did not consider that an inspection was possible. However, 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.

5. The tribunal had before it a trial bundle of documents prepared by the one of the parties in accordance with previous directions. The trial bundle comprised electronic versions of copy deeds, contracts, documents, letters and emails.

The background and the issues

6. The Premises consists of three leasehold flats. The individual properties are let on long leases and are all in the same format and include all the same terms, provisions covenants and conditions.

7. The respondent/tenants hold long leases of the individual properties which require the applicant/landlord to provide services and the tenant to contribute towards their costs by way of a service charge. The applicant tenants must pay a percentage or share defined in their leases for the services provided.

8. The application to be considered by the tribunal focused upon making sure that the property is watertight thus preventing further water ingress. 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 carried out to the properties. With regard to the grounds for seeking dispensation the applicant stated in the S20ZA application that the application was required in respect of urgent repairs and maintenance to prevent further water damage to the properties and in particular no 278.

9. The matters in issue now fall to this Tribunal to determine as more particularly set out below.

The dispensation issues and decision

10. 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 the repairs and maintenance works This application does not concern the issue of whether or not service charges will be reasonable or payable.

11. Having considered all of the copy deeds documents and legal submissions provided by both parties, the Tribunal determines the issue as follows.

12. 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.

13. 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.

14. The works carried out by the applicant were urgent works to stop water ingress to the property along with scaffolding to the building listed in the comprehensive application documentation submitted to the Tribunal. Due to the emergency nature of the works no consultation process will occur prior to the commencement of the roof repair works.

15. The Tribunal did not receive any objections sent directly to it and no objections were disclosed in the trial bundle supplied to the Tribunal In accordance with Tribunal Directions. Therefore, the Tribunal takes the view that there are no objections to this application. Indeed, there were two submissions from tenants in support of the application.

16. 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.

17. 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.

18. 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. It should also be remembered that no leaseholder appears to have lodged an objection to this application.

19. The tribunal was of the view that they could not find significant relevant prejudice to the tenant/respondents. The tribunal accepted the landlord'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 as dry as possible.

20. 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.

21. Rights of appeal available to parties to this dispute are set out in an Annex to this decision.

22. The applicant shall be responsible for formally serving a copy of the tribunal's decision on all leaseholders.

Name:	Judge Professor Robert Abbey	**Date:**	1 February 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 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 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 -
  (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.

20B Limitation of service charges: time limit on making demands.

(1)If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2)Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.