



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

**Case Reference** : **LON/00AY/LDC/2021/0094  
PREMOTE**

**Property** : **Flats 1-18 Alderley House, Albion  
Avenue, London SW8 2AN**

**Applicant** : **The Mayor and Burgesses of the London  
Borough of Lambeth.  
(Harsha Kara –  
HOS/LIT/HKARA/SPENCERHOUSE608479)**

**Representatives** : **-**

**Respondents** : **The several leaseholders of flats Alderley  
House, Albion Avenue, London listed in the  
application**

**Objecting tenant** : **-**

**Type of  
Application** : **Application for the dispensation of  
consultation requirements pursuant to S.  
20ZA of the Landlord and Tenant Act 1985**

**Tribunal  
Members** : **Judge Professor Robert M Abbey  
Trevor Sennett**

**Date of  
Determination  
and Decision** : **26 July 2021**

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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 the Tribunal's decision are set out below.

## **The background to the application**

1. The property, **Flats 1-18 Alderley House Albion Avenue London SW8 2AN**, comprises 18 dwellings being a residential purpose-built block where the applicant says that there are 11 leasehold flats which will ultimately be liable for an element of the rechargeable black cost.
2. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") 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 request for dispensation concerns urgent remedial works to remove a defective heat exchanger and the replacement for a new heat exchanger that serves the entire block.
3. Although the works were completed as an emergency in December 2020, the Applicant sent out a letter dated 11 February 2021 to all the Respondents, informing them about the work, that was undertaken on an emergency basis, advised them of the estimated contribution, invited them to put forward any questions and observations. The qualifying works relate to a heat exchanger which serves the entire block. The applicant says that the reason for the emergency works was because, the heat exchanger was leaking and causing the burner to fail. In order to comply with the Landlord's covenants under the leases and to ensure a continued service, the heat exchanger failure, was deemed a critical situation requiring urgent remedy. There was also an added risk that if the heat exchanger were to burst, it would cause flooding which would ultimately result in denying our residents of hot water for personal hygiene, which would also breach Health and Safety requirements. Therefore, the applicant says it instructed its contractor to proceed with the replacement of the heat exchanger on an emergency basis, which would enable them to order the equipment in a timely manner and complete the works. The applicant believes that by completing the emergency works as quickly as possible, the leaseholders of 1-18 Alderley would have a fully functioning heat exchanger and the Applicant could continue delivering its obligation of providing hot water with minimal disruption to the residents of the block.

4. Section 20ZA relates to consultation requirements and provides as follows:

*“(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.*

5. At the time of a hearing for Directions on 26<sup>th</sup> May 2021 made by Judge Hamilton-Farey the Directions required tenants who opposed the application to make their objections known on the reply form produced with the Directions. No objection form was received from any tenant of the flats.
6. In essence, the works mentioned above are required to ensure the safe removal and replacement of the heat exchanger to ensure the proper and continuing supply of hot water.

### **The decision**

7. By Directions of the tribunal dated 26<sup>th</sup> May 2021 it was decided that the application be determined without a hearing.

8. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.
9. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as PREMOTE a decision on the papers agreed by the parties. A face-to-face hearing was not held because it was not possible due to the Covid -19 pandemic restrictions and regulations and because all issues could be determined by a paper-based decision. The documents that were referred to are in a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions.
10. The tribunal had before it a substantial bundle of documents prepared by the applicant that contained the application, grounds for making the application including a sample lease, copy correspondence and copy Tribunal Directions.

### **The issues**

11. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether or not service charges will be reasonable or payable.**
12. Having read the evidence and submissions from the Applicant and having considered all of the copy deeds, reports, documents and grounds for making the application provided by the applicant, the Tribunal determines the dispensation issues as follows.
13. 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.
14. 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 must be satisfied that it is reasonable to do so.
15. 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.

16. The Supreme 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.
17. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the lessor/applicant 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 raised an objection to the emergency works to the heat exchanger.
18. The tribunal is of the view that, in the absence of any significant written representations from any of the remaining leaseholders, it could not find prejudice to any of the tenants of the properties by the heat exchanger removal and replacement works set out in detail in the documentation in the trial bundle submitted in support of the application.
19. The Tribunal was mindful of the fact the absence of a properly functioning and safe heat exchanger is of considerable concern and that the safety and well-being of all of the residents, able bodied or

otherwise, is paramount and that therefore dispensation is wholly appropriate where the removal and replacement of the heat exchanger is concerned.

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. It must be the case that crucial heat exchanger replacement works should be carried out as a matter of urgency to ensure the safety and comfort of all leaseholders and hence the decision of the Tribunal.
21. Rights of appeal made 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. 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 block. 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  
M. Abbey

**Date:** 26 July 2021

## **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.