FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/LDC/2022/0096**
HMCTS code	**:**	**P: PAPER REMOTE**
Property	**:**	**Warren House and Atwood House, Beckford Close, London W14 8TR**
Applicant	**:**	**FIT Nominee Limited and FIT Nominee 2 Limited**
Representative	**:**	**Premier Estates Limited**
Respondents	**:**	**The leaseholders of Warren House and Atwood House**
Representative	**:**	**Mr Sailendra Nahar**
Type of application	**:**	**Dispensation with Consultation Requirements under section 20ZA Landlord and Tenant Act 1985**
Tribunal member	**:**	**Judge Robert Latham** **Mr Stephen Mason FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**24 August 2022**

DECISION

The Tribunal grants this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 without condition in respect of works to replace the fire damper system at Warren House and Atwood House.

Covid-19 pandemic: description of hearing

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was P:PAPER REMOTE. The Directions provided for the application to be determined on the papers unless any party requested a hearing. No party has objected to this course. Mr Nahar no longer requires an oral hearing. The applicant has filed a bundle in in support of the application.

The Application

1. By an application dated 6 April 2022, the Applicant seeks dispensation from the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 ("the Act"). The application relates to Warren House and Atwood House, Beckford Close, London W14 8TR ("the Property"). The application has been issued by Ms Lisa-Marie Bradnock, who is the Senior Operations Manager for Premier Estates Limited who have been appointed by the landlord to manage the Property.

2. Warren House is a purpose built block of 235 flats which was constructed in about 2000. There is a separate block at Atwood House which consists of 55 units of social housing. Atwood House is leased to Notting Hill Home Ownership Ltd ("Notting Hill"). Notting Hill has sublet these flats under shared ownership schemes.

3. The Applicant seeks dispensation in respect of the statutory consultation requirements in respect of the replacement of fire damper system at the Property. On 23 April 2021, the Applicant had served the Stage 1 Notice of Intention to execute the works. On 28 June 2021, the works commenced. The Applicant did not serve the Stage 2 Notice of Estimates because of the delays that this would have caused. As a result, the Applicant requires dispensation, otherwise the costs which the landlord would be able to pass on through the service charge would be limited to £250 per leaseholder. Costs totalling £281,766 (including professional fees and VAT) appear in the 2021 service charge accounts for the replacement of fire dampers.

4. On 31 May 2022, the Tribunal issued Directions. The Tribunal stated that it would determine the application on the papers, unless any party requested an oral hearing.

5. By 16 June 2022, the Applicant was directed to send to each of the leaseholders (and any residential sublessees) by email, hand delivery or first-class post: (i) copies of the application form (excluding any list of respondents' names and addresses) unless also sent by the Applicant; (ii) if not already detailed in the application form, a brief explanation for the reasons for the application and (iii) a copy of the directions. The

Applicant was also directed to display a copy in a prominent position in the common parts of the Property.

6. On 17 June 2022, Ms Bradnock confirmed that the Applicant had complied with this Direction. On 10 June, the application form and directions had been issued to the leaseholders. On 13 June, a copy of these documents was displayed in the common parts of the Property.

7. By 27 June 2022, any leaseholder who opposed the application was directed to complete a Reply Form which was attached to the Directions and email it both to the Tribunal and to the Applicant. The leaseholder was further directed to send the applicant a statement in response to the application together with any documents upon which they sought to rely.

8. Twenty leaseholders at Warren House and three sub-lessees at Atwood House completed the Reply Form objecting to the application. None of the leaseholders sent a statement in response to the application. Those leaseholders who returned the Reply Form are listed in the Appendix. All the leaseholders who oppose the application appointed Mr Sailendra Nahar as their representative.

9. Nr Nahar lives at 196 Warren House. He is the joint lessee of this flat together with his wife, Mrs Indrani Nahar. Mr Nahar is also the director of Rahaan International Limited which is the leaseholder of 233 Warren House. Mr Nahar completed a Reply Form, dated 24 June. He stated that he had not sent a statement in response to the application. However, he requested an oral hearing. He also notified the Tribunal that he had not been served with the papers, and that there were other lessees and sub-lessees who had not received the form.

10. On 18 July 2022, this Tribunal heard the application brought by Mr Nahar and 42 leaseholders/sublessee in LON/00AW/LSC/20212/0189. This application was brought pursuant to section 27A of the Act and involved the payability and reasonableness of service charges demanded for the years 2014-2021. This challenge included the payability and reasonableness of the works to replace the dampers. Ms Bradnock stated that the current application and directions had only been emailed to one leaseholder in respect of each flat. Thus, whilst it had been emailed to Mrs Nahar in respect of 196 Warren House, it had not been emailed to Mr Nahar. Mr Nahar did not provide any adequate explanation as to why he had not filed any Statement of Case on behalf of either himself or the 22 other leaseholders who had appointed him to represent them. Mr Nahar sought time to file a Statement of Case. He confirmed that he did not require an oral hearing and was content for the application to be determined on the papers.

11. On 20 July 2022, this Tribunal issued further directions. By 17.00 on 20 July, the Applicant was directed to serve the application and the further directions on any leaseholder or sublessee who had not been served on

10 June. At 17.22 on 20 July, Ms Bradnock notified the Tribunal that that the directions and application form had been issued via email, post and hand delivered to each residence. Ms Sasha Smith, a Property Management Officer at Notting Hill, also emailed the papers to the sub-lessees at Atwood House.

12. The Tribunal directed any leaseholder who opposed the application to email both the tribunal and the Applicant a Reply Form, a Statement of Case and any documents upon which they sought to rely by 16.00 on 29 July. On 25 July, Mr Nahar sought an 28 day extension of time. On 28 July, the Tribunal agreed to grant Mr Nahar an extension until 1 August.

13. On 1 August, Mr Nahar filed a Statement of Case opposing the application together with a number of further documents. On 19 July, Mr Nahar had emailed a number of questions to Ms Bradnock. On 20 July, Ms Bradnock provided a partial response to these. None of these questions were relevant to the issues which we are required to determine.

The Law

14. The consultation requirements applicable in the present case are contained in Part 2 of Schedule 4 to the Service Charge (Consultation Requirements) (England) Regulations 2003. A summary of these is set out in the speech of Lord Neuberger in *Daejan Investments Limited v Benson ("Daejan")* [2013] UKSC 14; [2013] 1 WLR 854 at [12]:

> Stage 1: Notice of Intention to do the Works: Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.
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> Stage 2: Estimates: The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.
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> Stage 3: Notice about Estimates: The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.
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> Stage 4: Notification of reasons: Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and

the association of its reasons, or specifying where and when such a statement may be inspected.

15. Section 20ZA (1) of the Act provides:

> "Where an application is made to the appropriate 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."

16. The Tribunal highlights the following passages from the speech of Lord Neuberger in *Daejan*:

> (i) Sections 19 to 20ZA of the Act are directed towards ensuring that tenants are not required to (a) pay for unnecessary services or services which are provided to a defective standard (section 19(1)(b)) and (b) pay more than they should for services which are necessary and are provided to an acceptable standard (section 19(1)(b). Sections 20 and 20ZA are intended to reinforce and give practical effect to these two purposes (at [42]).
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> (ii) A tribunal should focus on the extent, if any, to which the tenants have been prejudiced in either respect by the failure of the landlord to comply with the Requirements (at [44]). The only question that the tribunal will normally need to ask is whether the tenants have suffered "real prejudice" (at [50]).
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> (iii) Dispensation should not be refused because the landlord has seriously breached, or departed from, the statutory requirements. The adherence to these requirements is not an end in itself. Neither is dispensation a punitive or exemplary exercise. The requirements are a means to an end; the end to which tribunals are directed is the protection of tenants in relation to unreasonable service charges. The requirements leave untouched the facts that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by, and what amount is to be paid for them (at [46]).
>
> (iv) If tenants show that, because of the landlord's non-compliance with the requirements, they were unable to make a reasonable point which, if adopted, would have been likely to have reduced the costs of the works or to have resulted in some other advantage, the tribunal would be likely to proceed on the assumption that the point would have been accepted by the landlord. Further, the more egregious the landlord's failure, the more readily a tribunal would be likely to accept that the tenants have suffered prejudice (at [67]).

(v) The tenants' complaint will normally be that they were not given the requisite opportunity to make representations about proposed works to the landlord. Accordingly, the tenants have an obligation to identify what they would have said, given that their complaint is that they have been deprived of the opportunity to say it. Indeed, in most cases, they will be better off, as, knowing how the works have progressed, they will have the added benefit of wisdom of hindsight to assist them before the tribunal (at [69]).

(vi) If prejudice is established, a tribunal can impose conditions on the grant of dispensation under section 20(1)(b). It is permissible to make a condition that the landlord pays the costs incurred by the tenant in resisting the application including the costs of investigating or seeking to establish prejudice. Save where the expenditure is self-evidently unreasonable, it would be for the landlord to show that any costs incurred by the tenants were unreasonably incurred before it could avoid being required to repay as a term of dispensing with the Requirements (at [58] - [59], [68]).

(vii) Where the extent, quality and cost of the works are unaffected by the landlord's failure to consult, unconditional dispensation should normally be granted (at [45]).

The Background

17. Fire dampers are devices designed to impede the spread of fire through ducts passing through walls, floors and partitions. They were installed in about 2000 when the Property was constructed. Ms Bradnock has stated that the expected life of the dampers was 10-15 years.

18. Until December 2020, ADT Fire & Security had been appointed to maintain the dampers. Following a retendering process, the Respondents' transferred the maintenance contract to MDS Fire and Security ("MDS"). After they had been appointed, MDC expressed concerns about their inability to access some of the dampers for maintenance. As a consequence, a report was obtained from MBS Buildings Systems Specialists ("MBS"). Their report concludes:

> "Due to the age and condition of this system, we would recommend replacing the controls and repairing all ductwork issues and defects. There are numerous dampers that we were unable to test due to access restrictions. Several of the dampers either do not operate or have been taped/wedged open. There are numerous actuators covered in tape, ductwork that isn't connected to the dampers or dampers that are broken beyond repair. In the event of a fire this system would not provide sufficient protection as designed."

19. The Respondents appointed Ream Partnership LLP ("Ream"), mechanical and engineering consultants, to conduct a site inspection to confirm whether the dampers needed to be replaced. If so, they were required to prepare a specification of works and seek tenders. Ream confirmed that the works were necessary, drew up a specification and obtained estimates from three contractors. The three tenders at p.1088-1109. The three tenders were submitted by (i) Spectrum Efficient Energy Limited £217,412; (ii) Thameside Mechanical Services Limited £225,739; and (iii) JC Watson Mechanical Limited £242,200. All these estimates exclude VAT.

20. On 23 April 2021, recognising that the cost of the works would exceed £250 per flat, Premier served a Stage 1 Notice of Intention. The works were stated as the "replacement of the fire damper system". The works were considered to be necessary because the dampers were an essential part of the fire protection of the Building. Observations were invited by 27 May. The leaseholders were invited to nominate a person from whom an estimate should be obtained. Ms Bradnock states that no leaseholder responded to the Notice. However, the Property Manager for Notting Hill requested more information which was provided.

21. Ms Bradnock states that she informed the Warren House Residents Association of the outcome of the reports and the proposed works. On 17 May 2021, she held a meeting with a number of leaseholders, including Mr Nahar, Mr Ekam-Dick, Mr Kumar and Ms Davenport. Ms Bradnock stated that this work was taking place as soon as possible due to the health and safety impact. Particulars were provided of the three estimates. On 1 June, Ms Davenport raised a number of points to detail to which Ms Bradnock responded on 2 June.

22. Ms Bradnock, informed by professional advice, concluded that the works could not be delayed. The Stage 2 Notice of Estimates would have caused unnecessary delay. The works therefore started on 28 June 2021. They have now been completed.

The Tribunal's Determination

23. The Applicant has provided a specimen lease for 67 Warren House. The Tribunal is satisfied that the Respondents are entitled to recover the costs of the damper replacement works as a service charge. Provision is made for this in paragraph 1 of Part II of the Sixth Schedule, by virtue of paragraphs 1, 2 and 3 of Sector 3 of Part I of the Sixth Schedule, and paragraphs 3.1, 6, 11 and 12 of Part II of the Sixth Schedule.

24. In considering whether to grant dispensation, the Tribunal must ask a simple question: "has any prejudice been caused to the leaseholders by the landlord's failure to serve the Stage 2 Notice of Estimates". The landlord did not service this notice because it would have delayed the

commencement of the works. The works were considered urgent, because of the risk of fire in this large development.

25. The Tribunal directed the parties to have regard to the decision of the Supreme Court in *Daejan*. In the Statement of Case filed on behalf of the 23 leaseholders who oppose the application, Mr Nahar suggests that this Tribunal is not bound by *Daejan* because two members of the Supreme Court gave strong dissenting judgments. He further suggests that the effect of this decision is to make Section 20ZA redundant. Further, it would make all leases granted prior to 6 March 2013 redundant because they were granted in the understanding that Section 20ZA would protect lessees from excessive service charges. Indeed, he seems to be suggesting that lessees signed their leases in the expectation that they would be entitled to a windfall of having any service charge for major works capped at £250, if their landlord failed to follow the statutory consultation procedures.

26. There is no basis in law for these submissions. Any lease is a contractual arrangement between landlord and tenant. The 1985 Act has been passed to protect tenants from being required to pay unreasonable service charge. Section 20ZA is part of the statutory armour to protect tenants from having to pay unreasonable service charges. The adherence to the statutory requirements is not an end in itself. Neither is dispensation a punitive or exemplary exercise. The requirements are a means to an end, namely to protect of tenants in relation to unreasonable service charges. This Tribunal is bound by the majority decision in *Daejan*. The Supreme Court set out clear principles which we must apply in determining this application for dispensation.

27. It is difficult to see how any prejudice could arise in this case. The First Stage of the statutory procedure, required the landlord to serve a Notice of Intention. On 23 April 2021, Premier served this Notice. The works were described as "replacement of the fire dampers system". The leaseholders of Warren House and Atwood House were invited to make any written observations by 27 May. No leaseholder did so. They were also invited to nominate a person from whom an estimate should be sought. No such person was suggested.

28. Stage two required the landlord to obtain at least two estimates for the works. Premier obtained three such estimates. Whilst these estimates had been obtained prior to the service of the Notice of Intention was served, Ms Bradnock stated that had the leaseholders suggested a contractor from whom an estimate should be sought, the tendering process would have been reopened. This situation did not arise.

29. Stage 3 required the landlord to serve the Notice about Estimates. This was not served. However, on 17 May 2021, Ms Bradnock held a meeting with a number of leaseholders, including Mr Nahar, Mr Ekam-Dick, Mr Kumar and Ms Davenport. Particulars were provided of the three

estimates. Ms Bradnock stated that this work was taking place as soon as possible due to the health and safety impact. On 1 June, Ms Davenport raised a number of points to detail to which Ms Bradnock responded on 2 June.

30. The Stage 4 Notice of Reasons does not arise, as the landlord selected the lowest estimate. There has been no suggestion that the landlord should have selected a higher estimate. The statutory procedure is to protect the leaseholders from paying unreasonable service charges. The landlord consulted on the proposed works. They obtained three estimates. They selected the lowest estimate. The Respondent therefore followed the spirit of the statutory procedure, albeit not the strict technical requirements.

31. The landlord states that they did not go through the statutory requirement of serving the Notice about Estimates because of the urgency of the works. Any landlord must ensure that any Building has proper fire precautions in place to protect residents from the risk of fire.

32. Mr Nahar has sought to suggest that prejudice has occurred:

(i) Had full consultation taken place, the leaseholders would have suggested that a report be obtained from ADT. A Notice of Intention was served. No such suggestion was made.

(ii) The Applicant waited until 6 April 2022 before making the current application for dispensation. The works had commenced on 28 June 2021. The Tribunal accepts that the application could have been made more promptly. However, this delay has not caused any prejudice to the leaseholders.

(iii) Mr Nahar suggests that the works might have proved to have been unnecessary had a further report been obtained. On the other hand, he suggests that the works were no more than a "repair job". The suggestion seems to be that a more comprehensive package of works was required. He also complains that he has not been provided with details of any guarantee or warrantee in respect of the works. The only issue which this Tribunal has been required to determine is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable. This is addressed by the Tribunal in its decision in LON/00AW/LSC/2021/0189.

(iv) Mr Nahar concludes by suggests that dispensation should be granted subject to the condition that the Applicant funds him to obtain a report from an expert surveyor appointed by the RICS to "look at all reports and submissions and to come to a conclusion on prejudice". The Notice of Intention afforded the leaseholders the opportunity to comment on the

scope of the proposed works. They did not take up this opportunity to do so. It is for this Tribunal to determine the issue of prejudice.

33. The Tribunal is satisfied that it is appropriate to grant dispensation without condition. The landlord has followed the spirit of the statutory consultation procedures. The Notice of Estimates was not served because of the urgency of the works. No prejudice has been caused to the leaseholders by this failure.

34. It would be appropriate for the Applicant to pass on the costs of this application through the service charge. This application was required because the landlord considered the works to be urgent and should not be delayed by the service of the Notice about Estimates. The Tribunal is satisfied that this decision was reasonable. A number of leaseholders have appointed Mr Nahar to act for them in opposing this application. The points raised by Mr Nahar have been without merit. Unnecessary delays and costs have arisen because Mr Nahar did not file a Statement in Response setting out their reasons for opposing the application by 27 June 2022, the date specified in the Directions.

35. The Directions make provision for the service of the Tribunal's decision. The Tribunal will email a copy of its decision to Premier Estate Limited who are representing the Applicant, and to Mr Nahar. The Applicant has been directed to serve a copy of the decision on all the relevant leaseholders and sublessees at Warren House and Atwood House. The Tribunal directs Mr Nahar to serve a copy of this decision on the leaseholders whom he represents.

Judge Robert Latham
24 August 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 **by e-mail** 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).

Appendix: List of Active Respondents

Warren House (Nos. 1-235)
196: Sailendra Nahar
15: Joseph Paul Samengo-Turner & Guenaelle Marie Therese Samengo-Turner
23: Hamid Abboui & May Habba
53: Wynne Rooms
54: Aman Uppal, UPL Property
79: Neelu Jhaveri
80: Rowena and Waffi Boulos
104: Alan Edward Webb
144: Ankit Kapur
161: Ayman Youssef
162: Vivan Kumar
170: Francois Ekam-Dick & Rachel Yohannes Gojam Ekam-Dick
175: Mohamed Ishan Issadeen
180: Joan Davenport
187: Aman Uppal, UPL Property
201: Aman Uppal, UPL Property
204: Marilyn Warries Bold & Derek Bold
213: Nazim Ali Asghar Choudhury
224: Brenda Ring
233: Rahaan International Ltd
Atwood House (Nos.236-301)
246: Daniel Rubinstein & Riikka Laulainen
283: Alice During
291: Paula Coffey