FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AY/LDC/2022/0152**
Property	**:**	**1-36 Darley House, Laud Street, London SE11 5HW**
Applicant	**:**	**London Borough of Lambeth**
Respondents	**:**	**The 12 leaseholders of the property (list attached to application).**
Type of Application	**:**	**Dispensation from consultation requirements under Landlord and Tenant Act 1985 section 20ZA**
Tribunal Members	**:**	**Judge Professor R Percival** **Ms S Coughlin MCIEH**
Venue	**:**	**Remote paper determination**
Date of Decision	**:**	**1 November 2022**

DECISION

Decisions of the tribunal

(1) The Tribunal, pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act"), grants dispensation from the consultation requirements in respect of the works the subject of the application.

Procedural

1. The landlord submitted an application for retrospective dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act") and the regulations thereunder, dated 15 July 2022.

2. The Tribunal gave directions on 13 September. The directions provided for a form to be distributed to those who pay the service charge to allow them to object to or agree with the applications, and, if objecting, to provide such further material as they sought to rely on. The application and directions was required to be sent to the leaseholders and any sublessees, and to be displayed as a notice in the common parts of the property. The deadline for return of the forms, to the Applicant and the Tribunal, was 4 October 2022.

3. The Applicant confirmed that the relevant documentation had been sent, and posted as notices, as required by the directions.

4. One leaseholder, Ms C Ogbanufe of flat 9, has submitted an objection, dated 9 October 2022. Ms Ogbanufe indicated that she was content for the matter to be decided on the papers.

The property and the works

5. The property is a purpose built block of 46 flats, of which 12 are leasehold. The flats have between one and three bedrooms.

6. The works, which have been carried out, relate to the mains water supply to Darley House. On 21 June 2022, the Applicant was notified by Thames Water of an underground leak to what is described as "the mains water supply externally to Darley House." The leak was resulting in the loss of over 30,000 litres of water a day. A report from Thames Water's contractor was appended to the application. The report states that the leak is to the privately owned water pipe suppling Darley House. In its letter to the leaseholders (see paragraph 8 below), the Applicant states that the work required is the responsibility of the Applicant.

7. The Applicant instructed a contractor, T Brown Ltd, with whom it had a qualifying long term agreement, within the terms of sections 20 and 20ZA of the 1985 Act, and the Service Charges (Consultation Requirements)(England) Regulations 2003 (and thus it is schedule 3 to those regulations that is engaged). The contractor provided a quotation of £59,305 for works to expose the mains pipe and to renew the pipe completely rather than attempt to locate the leak, which was under the building, to effect a repair. Work was approved by the Applicant on 11 July 2022, and had started by the time the application was made four days later.

8. On 14 July 2022, the Applicant wrote to the leaseholders to inform them of the total cost of the works and the cost to them, explain why they were necessary, and inform them of this application. Accompanying the letter was a FAQ document, dealing with concerns that leaseholders might have, such as the nature of a dispensation application, and whether it amounts to the Applicant "taking you to court".

Determination

9. The Tribunal is concerned solely with an application under section 20ZA of the 1985 Act to dispense with the consultation requirements under section 20 of the same Act.

10. The Applicant argues, first, that the repair was urgent. The leak was losing a large amount of water per day, residents were reporting hearing the sound of gushing water, and there was a risk that the pipe would rupture further, leading to a loss of water supply to the building.

11. Secondly, a temporary fix, which would have allowed a consultation process to take place, was not advisable. To do so would increase the total cost, and would have the undesirable consequence of exposing the pipe to ambient temperatures for a sustained period. The adverse consequences of doing so were not specified, and we do not speculate as to what they might be.

12. Finally, the Applicant submits that there is no prejudice to leaseholders, citing *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854. Leaseholders would not be paying for unnecessary or inappropriate work, and would not be contributing more than was reasonable to the works.

13. Ms Ogbanufe submitted that, first, the works were not required for health and safety reasons as there was no threat to life or property. Secondly, she argued that at all times there was a constant supply of clean water before the works commenced. The works were not, therefore urgent.

14. The bundle includes an email response from the Applicant to Ms Ogbanufe, in which the Applicant quotes "a legal statement" from Thames Water's contractor. The quotation asserts that the repair is the responsibility of the Applicant, and that if the Applicant does not notify the contractor that the repair "has been actioned" (whatever that means) within seven days, a notice would be served under a provision in the Water Industry Act 1991 which, the quotation asserts, would enable Thames Water to repair the leak and charge the cost to the Applicant. The quotation also adverts to the danger of water leaks "causing damage to foundations [and] buildings". We note that the Applicant has not sought to rely on this danger, and it appears likely that the statement is of a generic nature, not specifically referring to the leak at Darley House.

15. In the first place, as to urgency, we accept that the Applicant was entitled to conclude that the works were sufficiently urgent to require immediate remediation. The key factor to which it adverted was the risk of the loss of water to a block of 36 flats. It was in the best position to assess the severity of this risk. We have seen the "justification report" prepared by an appropriate officer of the Applicant, upon the basis of which the decision to go ahead with the works was based. It seems apparent that the officer considered relevant matters, and we do not think either we, or Ms Ogbanufe, are in a position to contradict what is, in any event, clearly a strong prima facie case for urgency. We note that Ms Ogbanufe refers to the lack of a risk of personal injury or damage to property, but that was not the main justification presented by the Applicant.

16. The Applicant also took account of the amount of water being wasted. That is a matter of public concern which the Applicant is entitled to take into account, albeit one that is of perhaps less immediately compelling significance than the danger of the loss of water supply.

17. Further, we accept the Applicant's argument that delay, with a temporary fix, would have increased the costs overall.

18. Secondly, and independently, we do not think that Ms Ogbanufe (or, of course, any of the other leaseholders who did not respond) have made a case that they have suffered prejudice as a result of the failure to consult. The point was argued at length by reference to *Daejan* in the application, so Ms Ogbanufe (and the other leaseholders) had adequate notice of the question. As will be seen, Ms Ogbanufe's response does not directly address the issue. Her submissions are directed entirely at the urgency issue. On the face of it, there is no reason to suppose that exactly the same work would have been authorised had there been consultation. For this reason (and independently of our conclusions as to urgency), we also conclude that we must allow dispensation, and we do so.

19. This application relates solely to the granting of dispensation. If, when they are charged, the leaseholders wish to contest the reasonableness of the costs, or otherwise to challenge the charge, then it remains open to them to apply to the Tribunal for a determination of those issues under section 27A of the Landlord and Tenant Act 1985.

Name: Judge Prof Richard Percival **Date:** 1 November 2022

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  (a) complied with in relation to the works or agreement, or
  (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  (a) an amount prescribed by, or determined in accordance with, the regulations, and
  (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20ZA

(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.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(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.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.