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

**Case Reference** : LON/00AA/LDC/2016/0079 and  
0080

**Property** : 25 Leasehold properties in London  
where the City of London  
Corporation is the lessor

**Applicant** : The Mayor and Commonalty and  
Citizens of the City of London

**Representatives** : -

**Respondents** : Leaseholders of the 25 leasehold  
properties in the West End area of  
London

**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** : Professor Robert M Abbey (Solicitor)

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

**Date of Decision** : 18 October 2016

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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 our decisions are set out below.

## **The background to the application**

1. 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 mechanical and electrical repairs and maintenance and building fabric repairs and maintenance, (“the works”), for 2012-2017 (first application) and 2017-2022 (second application), carried out to 25 flats across the West End of London, (“the properties.”).
2. 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.*

3. The properties are within mixed use buildings, that is within commercial buildings that also contain residential flats. At the time of a hearing for directions on 13<sup>th</sup> August 2015 Judge Carr required the applicant lessor to send copies of the application to the tenants. If a tenant opposed the application then they were required to make their objections known. There were no objections filed with the tribunal.
4. In essence the works mentioned above included mechanical and electrical repairs and fabric repairs for the period 2012 to 2017. The applicant concedes that there was a breach of the consultation but failed to progress the consultation procedure. The first application is therefore retrospective. The second application relates to proposed new agreements from 2017 onward. The reason for the dispensation application is that the applicant has already carried out some consultation.

### **The decision**

5. By Directions of the tribunal dated 9 August 2016 it was decided that the application be determined without a hearing.
6. The tribunal had before its two bundles of documents prepared by the applicant.

### **The issues**

7. 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.
8. Having read the evidence and submissions from the Applicant and having considered all of the copy deeds documents and reports provided by the applicant, the Tribunal determines the dispensation issues as follows.
9. 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.

10. 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.
11. 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.
12. 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.
13. 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 has indicated that they actually oppose the applications.

14. The tribunal is of the view that they could not find prejudice to any of the 25 tenants of the properties in the works carried out or to be carried out by the applicant. It would seem that in relation to the first application, the contractor was awarded the contract after a proper procurement process. The applicant believes that the contract has resulted in services of a good standard and of a reasonable price. The applicant also says that affected leaseholders have not paid for any inappropriate works and as such have not suffered any prejudice by the failure to consult. On the evidence before it the tribunal agrees with this conclusion.
15. In relation to the second application, the new agreements will be negotiated within an existing Framework Agreement and therefore the applicant expects that the works eventually provided under the proposed agreements will be of a high standard and carried out at a competitive price. The tribunal cannot discern any prejudice to the leaseholders and believes that it is reasonable to allow dispensation in relation to the subject matter of the second application.

**Name:** Prof. Robert M. Abbey      **Date:** 18 October 2016