



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

Case reference : **LON/00AW/LDC/2020/0086**

Property : **Kelvin Court, 40-42 Kensington
Park Road, London, W11 1BT**

Applicant : **Northumberland & Durham
Property Trust Ltd**

Representative : **D&G Block Management Ltd**

Respondent : **Cameron Marshall**

Representative : **Philip Marshall QC**

Type of application : **Dispensation under s.20ZA LTA
1985**

Tribunal members : **Jim Shepherd
Kevin Ridgeway MRICS**

Date of decision : **5th May 2021**

DECISION

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the Ministry of Justice Cloud Video Platform with all participants joining from outside the court. 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 in a remote hearing. The documents that were referred to are in two bundles, 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

1. In this application the landlord, Northumberland and Durham Property Trust Ltd (“ The Applicants”) seek dispensation from the consultation requirements under the Landlord and Tenant Act 1985, s. 20. The dispensation is sought pursuant to section 20ZA of the same act. The application made by the landlord was dated the 18th of June 2020. The works that the landlord is seeking to carry out involve the replacement of two of the boilers at Kelvin Court, 40 - 42 Kensington Park Road, London, W11 1BT (“Kelvin Court”). Kelvin Court is an early 1900s brick construction block with 16 self-contained flats within a conservation area.
2. In their application (pages 1-10 of the hearing bundle) the Applicants stated that two of the communal boilers had broken down and the other could not cope on its own. As a result of the failed boilers legionella bacteria began increasing within the water supply to the point where lessees were advised to avoid showering and instead. The section 20 process had started but the consultant overseeing the project had been hospitalised with COVID-19 and was not able to continue with the project. There was some urgency in the requirement to replace the boilers and therefore the work had already started.

3. A short timeline of events was provided in the Applicants' application and the Tribunal were provided with the relevant communication:
- a) On the 27th of January 2020 the lessees were emailed advising them that the boilers were not operating at full capacity and it was not possible to maintain water within the preferred temperature range and therefore a chemical disinfection of hot and cold water storage pipework would take place. It was stated that it was intended to replace the boilers in the summer of 2020 along with the associated plant equipment.
 - b) On the 19th of February 2020 a notice of intention was served on lessees for the boiler replacement and remedial works to the supporting plant equipment.
 - c) On the 17th of March 2020 the lessees were emailed advising that water sampling showing isolated results of legionella bacteria were identified and the lessees were given advice as to how to deal with this.
 - d) On the 3rd of April 2020 the lessees were emailed to advise that they would have noticed a rapid loss of hot water. The landlord had arranged urgent replacement of the two boilers and supporting electrical equipment. This process has been in liaison with the mechanical and electrical specialist consultants despite the main contractor contracting a severe case of COVID-19.
 - e) On the 3rd of April 2020 a copy of a quote was received and statement of estimates emailed to lessees. It was stated that other boiler companies had been approached to quote but they were not in a position to inspect within the tight timeframe.
 - f) On 6 April 2020 all lessees were emailed to advise that the communal heating would be turned off.

- g) On 15 April all lessees were emailed to confirm the boiler replacement works were underway on site.
4. The leaseholders at Kelvin Court were invited to comment on the dispensation application. Philip Marshall QC replied on behalf of his son Cameron Marshall who is the leaseholder of flat 11 Kelvin Court. This reply is dated 20 October 2020 (page 11).
 5. In a detailed statement of case of Cameron Marshall (12-94) which was attached to the reply he objected to the dispensation or stated that any dispensation should only be given subject to conditions including that Cameron Marshall's contribution to the costs associated with the replacement of the boilers should be limited to £250 and that his reasonable costs of investigating this matter and participating in these proceedings should be paid by the Applicant.
 6. Mr Marshall claims there was a failure to consult in his case. He says that the Applicant's application was based on a misconception about the consultation process in that it relied on the fact that there were no responses from any of the leaseholders to the correspondence between 19 February 2020 - 15th of April 2020. He said he had not received this correspondence. As the case developed this fairly narrow argument was expanded in order to address challenges brought by the Applicant as to prejudice.
 7. The statement of case by Cameron Marshall alleged that there was a blatant breach of section 20 of the LTA 1985 which was made worse by the fact that the Applicant had previously made representations to him that no replacement of the boilers was anticipated. This had, it was said, a material impact on the level of indemnity that Mr Marshall had negotiated with the previous leaseholder of Flat 11.

8. The factual summary laid out in Cameron Marshall's statement was as follows:
- a) He acquired the leasehold title on 20 December 2019. Despite his status as a leaseholder the Applicant failed to communicate with him at all in respect of proposed works to replace the two boilers at the property he alleged. He was not informed of the messages and correspondence apparently sent to the other lessees on 27 January, 29th January, 19 February, 17 March, 3 April 2020 or 6 April 2020. It is said that the first Cameron Marshall knew of the issue was on 15 April 2020 when the boiler replacement work was already underway.
 - b) As soon as he became aware of the work being carried out he raised the issue of failure to consult with the Applicant's managing agent. The managing agents (Miss Brindle) response was that they required a receipted notice to be completed before they were prepared to change their ownership records. The witness statement stated this was a misconceived approach because the receipt of notice of assignment is irrelevant to the notice procedure under section 20. The Applicant themselves were at fault for delaying the process and even if the receipted notice had any relevance it had been received by the Applicant's agent by 24 February at the latest so that there was no excuse for not giving notice of the works.
9. The statement of Cameron Marshall continues that during the period in question he had been operating under the reasonable belief that no significant works to the boilers were anticipated in the immediate future. He relied on pre -contract enquiries in December 2019 when the Applicant was specifically asked whether any qualifying works within the meaning of section 20 of the 1985 Act were proposed. In response the managing agents did not disclose any works it was alleged. However the Tribunal notes and regards as significant that the document from the managing agents did mention remedial boiler

works – see para 4.8.1 of the Pre Contract responses. Therefore it is wrong to say that there was no mention of forthcoming works.

10. The statement further argues that the Applicant was already aware by 10 July 2019 that the boilers would need to be replaced after the total failure of the heating and hot water system at that time.
11. In relation to prejudice Mr Marshall said that he had suffered significant prejudice because he would have sought clarification about the works proposed. He said that the managing agent deliberately inhibited him from investigating the works proposed. He also challenges the cost of the work saying that a estimate provided the previous year for the replacement of one lift was £6916.18 whereas the estimate for the replacement of two lifts and was more than double this amount. Finally he also challenged the administration fee charged by the managing agents of £500 plus VAT.
12. Pausing here, it is not for the Tribunal to deal with issues of cost in this application save where it is relevant to the question of prejudice. Our sole focus is the question of whether dispensation should be given. It is of course open to leaseholders to bring a further application in relation to the costs incurred. Indeed the Tribunal understands that such an application has been brought.
13. In relation to the urgency of the work, Mr Marshall submits in his statement that it is misconceived to say that this would have inhibited other quotes being obtained. He says that it is possible that a single boiler could in fact have supported the needs of the premises for a reasonable period so that other quotes could be obtained. The weather in April 2020 was one of the warmest on record and there was no need for any heating to be on. The only requirement was the provision of hot water. He says that there is no evidence that a single boiler could not supply such a limited service.

14. In summary Mr Marshall submitted that the tribunal should adopt the procedure set out in *Daejan* at paragraphs 55 to 64, per Lord Neuberger, of only granting the application on conditions that included the limitation of recovery from Cameron Marshall in respect of the works to £250 and the payment of the reasonable costs of Mr Marshall in responding to the application plus the refund of the overpayment of service charges already made by him in respect of the major works.
15. Attached to the statement of Cameron Marshall are a number of documents including correspondence between the parties and other relevant documents including:
- a) A letter dated 19 February 2020 stating that it was intended pursuant to section 20 of the Landlord and Tenant act to carry out communal boiler replacement and associated remedial works. The works to be carried out at Kelvin Court were not limited to the installation of new boilers but included mounting kit and associated equipment, disconnection and removal of the broken down boilers, installation of new boilers etc. Leaseholders were invited to nominate any contractors that they wanted to quote.
 - b) A letter dated 17th March 2020 from Laura Burke to the leaseholders stating that recent water testing undertaken as part of the water in hygiene maintenance programme had returned isolated results of legionella bacteria growth. The letter went on to state that the boiler equipment was not currently operating at full capacity which had contributed to the decline in water quality. The landlords had instructed consultants to design and specify on tender replacement of the two boilers and associated plant however given the recent water testing results the landlord was arranging to have a second new boiler installed urgently ahead of the main works to maintain the water quality. There followed various pieces of advice in terms of managing water use in the future.

- c) A letter dated 3rd April 2020 from Melissa Brindle to the leaseholders addressing the problems of water heating at Kelvin Court stating that the building was normally serviced by three boilers and at present only one was operating which was causing a legionella risk, fire safety risk, plus the ongoing risk of losing total heating and hot water services. The letter went on to state that a new boiler had been installed the previous year pursuant the section 20 consultation however one of the older boilers had broken down and could not be started up again leaving the new boiler as the only one operating. The letter stated that the urgency of the situation made it unreasonable to prolong the situation any further by putting the matter out to tender over a few months. Accordingly it was stated that the urgent replacement of the two remaining boilers and supporting electrical equipment had been arranged.

- d) A letter dated 3 April 2020 to all leaseholders with a statement of estimates in relation to the proposed works. The estimate was £15,169.38. This was provided by N.Carr Engineering Ltd .

- e) A letter dated 15th of April 2020 from Melissa Brindle to the leaseholders saying the boiler work was underway that week and that there may be intermittent disruption to water services.

- f) A letter dated 23rd of June 2020 from Melissa Brindle to all lessees with the estimated service charge for the coming year. The budget included a major works contribution. This was included in consideration of the remaining remedial boiler works and a fire alarm upgrade projects.

16. In their response to Mr Marshall's objections (95-123) the Applicant stated various matters:

- a) They accepted that the initial notice of 19 February 2020 was sent to the previous leaseholder of flat 11 because a receipted notice of transfer confirming Mr Marshall's interest in the flat had not been received by the Applicant's agent until 24 February 2020. It was not accepted that any other leaseholders were not served with the initial notice.
- b) The Applicant questioned how Mr Marshall alleged he was suffering prejudice in having to pay for inappropriate works or paying more than would be appropriate as a result of the failure to consult (per *Daejan*). They stated that Mr Marshall was aware of the need for remedial works to the boilers prior to purchase as this was disclosed in the precontract enquiries. They stated that his failure to require a suitable indemnity from the vendors or reduction in purchase price to reflect the proposed major works was not prejudice that arises as a result of non-compliance with the section 20 requirements. They stated that Mr Marshall was provided with the statement of estimates by email on 6 April 2020. Pausing there, Mr Marshall QC at the hearing denied that he had received this email. On a balance of probabilities the Tribunal is satisfied that he did receive the email.
- c) The Applicant states that Mr Marshall is wrong in his challenge of the estimates for the new boilers. They sought advice on the quotes from their consultants Integrated Design Associates (“IDA”) who confirmed that the quote from N.Carr Engineering Ltd was fair and reasonable. They stated that Mr Marshall had not provided any evidence to contradict this view or to support his allegation that the 2020 quote was too high. They also state that the DMG block management administration fee was properly recoverable under the lease. Finally they said that the situation worsened between February and April 2020 as a result of the one existing boiler that was still functioning breaking down. This led to the water engineers reporting increases in legionella bacteria and complaints from leaseholders that water temperatures were dropping. The Applicant was provided with urgent advice from its expert consultants and water engineers that the single functioning

boiler was struggling to support the needs of the property and that replacement of the two other boilers was the only solution. They refer to an email from IDA at appendix 2 to their submission and an email from Thompson Environmental Services Ltd at appendix 3. The former letter states into alia:

"With regard to the possibility of obtaining an alternative price for the proposed works from another contractor I did approach another contractor to try and get an alternative price but they were unable to assist at this time."

17. It must be remembered that this was the early stages of the pandemic and obtaining building contractors at this time was particularly difficult not least because they were hampered by the fact that a lot of the building material suppliers had to close.
18. Cameron Marshall then served a supplementary statement of case (124-129). In that statement the Tribunal was informed that the Applicant was no longer seeking relief against Cameron Marshall although relief was still sought against the other leaseholders. In other words the Applicant was only going to charge Cameron Marshall £250 for the work whilst continuing to pursue the other leaseholders. A letter from the Applicant's solicitor to the tribunal dated 23 November 2020 indicated that they were taking a *pragmatic proportionate and commercial* approach and were no longer seeking dispensation against Mr Marshall and withdrew their application with regard to him only. The Tribunal was unable to accept such a partial withdrawal.
19. Notwithstanding this gesture of goodwill the supplementary statement of Cameron Marshall stated that because the Applicant have not agreed to pay the costs of Mr Marshall QC in opposing the application his objection continued and it was confirmed that the costs should be paid either as a condition of the grant of any relief or alternatively as a sole standing order under rule 13 of the Tribunal rules. Mr Marshall QC was

representing Cameron Marshall. He told the Tribunal that he was instructed by solicitors who were acting on behalf of Cameron Marshall. A similar arrangement had been in place in a previous case he cited to the Tribunal which was a hearing in Central London County Court. The Tribunal had insufficient evidence that challenged the credibility of the arrangement and therefore it accepts that it was valid. Notwithstanding this the Tribunal was surprised to say the least that the matter had continued notwithstanding what seemed to be a very generous gesture of goodwill by the Applicant.

20. Indeed the Tribunal considers that this case could have and indeed should have been resolved at the end of November 2020. Despite this Mr Marshall QC continued to challenge the dispensation issue to the cost of the Claimant and ultimately the other leaseholders.

21. There then followed a further supplementary statement of case from Cameron Marshall (130-135). In that supplementary statement it was stated that a number of other tenants had filed notices indicating their support for Mr Marshall's opposition to the application. These were Harriet Oliver, Kaveh Bazrargan, Christopher Taylor, Naira Manoukian and Mr Lester Ezrati. Although these individual leaseholders had filed notices of objection they did not take part in the proceedings. It is also worth noting that none of these individuals objected at the time that the original notification by the Tribunal was sent out.

22. In addition the second supplementary statement of case of Cameron Marshall included evidence from a firm called Green Flame London. This firm had visited the building and provided a letter in essence challenging the evidence of the design consultant Integrated Design Associates. As the tribunal understood this second supplementary statement and the evidence contained within it was an effort to illustrate prejudice that had been suffered by Cameron Marshall. The argument running that if the proper consultation process had been carried out, Cameron Marshall would have been able to instruct Green

Flame in order to carry out an inspection and provide a competitive quote in challenge to the quotes obtained by the applicant. The letter from Green Flame also sought to challenge the fact that N. Carr Engineering and the works carried out by them was defective. Jan Wurstz of Green Flame stated that the installation was not correct due to inappropriate materials being used. He recommended upgrading the pipes and filters. He then stated that his own company could have installed an additional boiler on this site for a cost which was similar to that charged in 2019 and the cost should not have exceeded £8760 plus VAT.

23. Pausing here neither party had permission to bring expert evidence to the tribunal and neither had sought it. In any event this argument in relation to prejudice was a new argument as far as the Tribunal is concerned. Cameron Marshall had in effect responded to criticisms of his failure to identify prejudice in his written original objection by using largely self-serving evidence. What is overlooked and continued to be overlooked in the hearing before the tribunal was the question of urgency. The applicants were faced with a very real health risk as well as a fire risk. On any account it was not reasonable to only have one boiler in service because as was identified during the tribunal there was the risk that that boiler itself would break down. If the Applicants had carried out a full consultation in accordance with section 20 of the Landlord and Tenant Act 1985 this would undoubtedly have delayed matters and the real risk could not be addressed until a later date which would not be appropriate in the tribunal's view.

24. The applicants were compelled to prepare another response to what were now three statements of case provided by Mr Marshall dated 27 November 2020, 11 December 2020 and 28 January 2021. In their response (136-146) they challenged the late objections by additional leaseholders. As already indicated the additional leaseholders played no real part in the proceedings save for filling in a form saying that they were objecting. The Applicants rehearsed the circumstances that led to

the dispensation application which have already been covered above. In their words the situation became even more critical towards the end of March 2020 when the water hygiene engineers raise concerns regarding the water quality as a result of only one boiler functioning. The managing agents therefore sought a quote from N. Carr to install a second boiler and carry out works necessary to resolve the situation. They state that although the second quote for N. Carr in 2020 was higher than that per boiler than 2019 the latter quote included significantly more work than the former, including electrical works to rewire the boiler control system, redesign adaptation of the existing flue system to support the new boiler and a new shunt pump system.

25. The Applicants denied the work carried out by N. Carr was defective and they attached to their submissions letter from Mr Carr to Ms Brindle dated 9 February 2021. They raised questions as to whether Green Flame could have done the work at the time i.e. at the height of the pandemic. They maintained that Mr Marshall had not suffered any prejudice. Whilst the leaseholders were not given the opportunity to seek other contractors to quote the position in reality was that it was very difficult to get anybody to quote. Moreover they say the prejudice that leaseholders would have suffered as a result of going without reliable hot water and heating for several months while the full consultation process ran its course would be considerably worse. This included the serious health risk posed by the escalating presence of legionella in the water system.

26. The Applicants resisted challenges brought by Mr Marshall in relation to disclosure and his position on costs. They raised issues about the way in which Mr Marshall QC was instructed by his son. This has already been addressed above.

27. Finally the Applicants stated that it was the Respondent's conduct that had forced this matter to proceed to a contested hearing. They say that the matter could have proceeded on the papers earlier. The Applicants

had said that they would only seek to recover the statutory £250 from him. This offer was rejected unreasonably they say in order to pursue a claim for costs against the Applicants. As already indicated the tribunal has some sympathy for this position.

28. Yet another statement in response was filed by Mr Marshall addressing specifically the question of costs. As indicated the tribunal is accepting that Mr Marshall QC was properly instructed by his son however the question of liability for costs is dealt with below.

The hearing

29. Kimberley Ziya appeared on behalf of the Applicant and Philip Marshall QC on behalf of the Respondent. There was some objection to late evidence produced by Mr Marshall but this was not pursued neither was Mr Marshall's application for further disclosure. Ms Ziya outlined the background to case which has already been covered in detail above. She stressed the urgency of the situation facing the Applicants. The Legionella risk and the fire risk were particularly concerning. One of the boilers had burnt through the wiring. She said that neither of the cases relied on by the Respondent, *Daejan* and the *Aster Communities* case had dealt with urgent situations like this. She also stressed the fact that no other leaseholders had objected at the time.

30. Mr Marshall QC responded by saying that the Applicants were seeking an indulgence by trying to charge more than £250. They had the burden of satisfying the Tribunal to allow them to do this. He said as long as there was a credible case of prejudice that was enough. He also said that any doubts on quantum of the works should be resolved in favour of the Respondent. He relied on *Daejan* for these propositions. He also relied on the *Aster Communities* case.

31. Mr Marshall QC said that the landlord had created this situation by only replacing one boiler in 2019. He also criticised the Applicants for not registering Cameron Marshall earlier as a leaseholder and therefore not consulting him. He was only informed once the works had started. If he had been informed in February 2020 he could have got in touch with Green Flame and got them to quote. This was notwithstanding the urgency of the situation. He challenged the need for three boilers and how the total cost was arrived at. He said N.Carr's work was defective. He summarised by saying that dispensation should only be given if his son was paid his costs and his outlay limited to £250. The current legal costs were £5640 (Mr Marshall QC) , £150 (Green Flame report) plus VAT.

32. Ms Ziya in response distinguished the *Aster Communities* case. She stressed the urgency of the present case. She said that the first substantive notice to the leaseholders was on 6th April 2020 which was received by Cameron Marshall. She said it would not be sensible for the building to be run on 2 boilers alone as one may break down and relied on evidence from N. Carr for this. She said that dispensation should be given without conditions. She challenged Mr Marshall's costs but indicated that no costs were sought at this stage although a Rule 13 application may be made depending on our decision.

Relevant law

Landlord and Tenant Act 1985,s.20ZA

20ZA Consultation requirements: supplementary

(1) *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.*

(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.

Daejan

33. In *Daejan Investments v Benson* [2013] UKSC 14, the landlord was the freehold owner of a building comprised of shops and seven flats, five of which were held by the tenants under long leases which provided for the payment of service charges. The landlord gave the tenants notice of its intention to carry out major works to the building. It obtained four priced tenders for the work, each in excess of £400,000, but then proceeded to award the work to one of the tenderers without having given tenants a summary of the observations it had received in relation to the proposed works or having made the estimates available for

inspection. The tenants applied to a leasehold valuation tribunal under section 27A of the Landlord and Tenant Act 1985 , as inserted, for a determination as to the amount of service charge which was payable, contending inter alia that the failure of the landlord to provide a summary of the observations or to make the estimates available for inspection was in breach of the statutory consultation requirements in paragraph 4(5) of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 so as to limit recovery from the tenants to £250 per tenant, as specified in section 20 of the 1985 Act and regulation 6 of the 2003 Regulations in cases where a landlord had neither met, nor been exempted from, the statutory consultation requirements. The landlord applied to the tribunal under section 20(1) of the Act for an order that the paragraph 4(5) consultation requirements be dispensed with, and proposed a deduction of £50,000 from the cost of the works as compensation for any prejudice suffered by the tenants, which offer they refused. The tribunal held that the breach of the consultation requirements had caused significant prejudice to the tenants, that the proposed deduction did not alter the existence of that prejudice, and that it was not reasonable within section 20ZA(1) of the Act, as inserted, to dispense with the consultation requirements. The Upper Tribunal (Lands Chamber) dismissed the landlord's appeal and the Court of Appeal upheld the Upper Tribunal's decision.

34. The Supreme Court , allowing the appeal (Lord Hope of Craighead DPSC and Lord Wilson JSC dissenting), held that the purpose of a landlord's obligation to consult tenants in advance of qualifying works, set out in the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 , was to ensure that tenants were protected from paying for inappropriate works or from paying more than would be appropriate; that adherence to those requirements was not an end in itself, nor was the dispensing jurisdiction under section 20ZA(1) of the 1985 Act a punitive or exemplary exercise; that, therefore, on a landlord's application for dispensation under section 20ZA(1) the question for the

leasehold valuation tribunal was the extent, if any, to which the tenants had been prejudiced in either of those respects by the landlord's failure to comply; that neither the gravity of the landlord's failure to comply nor the degree of its culpability nor its nature nor the financial consequences for the landlord of failure to obtain dispensation was a relevant consideration for the tribunal; that the tribunal could grant a dispensation on such terms as it thought fit, provided that they were appropriate in their nature and effect, including terms as to costs; that the factual burden lay on the tenants to identify any prejudice which they claimed they would not have suffered had the consultation requirements been fully complied with but would suffer if an unconditional dispensation were granted; that once a credible case for prejudice had been shown the tribunal would look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice; and that, accordingly, since the landlord's offer had exceeded any possible prejudice which, on such evidence as had been before the tribunal, the tenants would have suffered were an unqualified dispensation to have been granted, the tribunal should have granted a dispensation on terms that the cost of the works be reduced by the amount of the offer and that the landlord pay the tenants' reasonable costs, and dispensation would now be granted on such terms. Per Lord Neuberger of Abbotsbury PSC, Lord Clarke of Stone-cum-Ebony and Lord Sumption JJSC. (i) Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation requirements an unconditional dispensation should normally be granted (post, para 45). (ii) Any concern that a landlord could buy its way out of having failed to comply with the consultation requirements is answered by the significant disadvantages which it would face if it fails to comply with the requirements. The landlord would have to pay its own costs of an application to the leasehold valuation tribunal for a dispensation, to pay the tenants' reasonable costs in connection of investigating and challenging that application, and to accord the

tenants a reduction to compensate fully for any relevant prejudice, knowing that the tribunal would adopt a sympathetic (albeit not unrealistically sympathetic) attitude to the tenants on that issue (post, para 73).

35. Lord Neuberger giving the leading judgment stated the following:

42. So I turn to consider section 20ZA(1) in its statutory context. It seems clear that sections 19 to 20ZA are directed towards ensuring that tenants of flats are not required (i) to pay for unnecessary services or services which are provided to a defective standard, and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard. The former purpose is encapsulated in section 19(1)(b) and the latter in section 19(1)(a) . The following two sections, namely sections 20 and 20ZA appear to me to be intended to reinforce, and to give practical effect to, those two purposes. This view is confirmed by the titles to those two sections, which echo the title of section 19 .

43. Thus, the obligation to consult the tenants in advance about proposed works goes to the issue of the appropriateness of those works, and the obligations to obtain more than one estimate and to consult about them go to both the quality and the cost of the proposed works. Mr Rainey QC and Mr Fieldsend for the respondents point out that sometimes the tenants may want the landlord to accept a more expensive quote, for instance because they consider it will lead to a better or quicker job being done. I agree, but I do not consider that it invalidates my conclusion: loss suffered as a result of building work or repairs being carried out to a lower standard or more slowly is something for which courts routinely assess financial compensation.

44. Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the

tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements.

45. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be—ie as if the requirements had been complied with.

46. I do not accept the view that a dispensation should be refused in such a case solely because the landlord seriously breached, or departed from, the requirements. That view could only be justified on the grounds that adherence to the requirements was an end in itself, or that the dispensing jurisdiction was a punitive or exemplary exercise. The requirements are a means to an end, not an end in themselves, and the end to which they are directed is the protection of tenants in relation to service charges, to the extent identified above. After all, the requirements leave untouched the fact 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.

47. Furthermore, it does not seem to be convenient or sensible to distinguish in this context, as the LVT, Upper Tribunal and Court of Appeal all thought appropriate, between “a serious failing” and “a technical, minor or excusable oversight”, save in relation to the prejudice it causes. Such a distinction could lead to an unpredictable outcome, as it would involve a subjective assessment of the nature of the breach, and could often also depend on the view one took of the state of mind or degree of culpability of the landlord. Sometimes such questions are, of course, central to the inquiry a court has to carry out, but I think it unlikely that it was the sort of exercise which Parliament had in mind when enacting section 20ZA(1) . The predecessor of section 20ZA(1) , namely the original section 20(5) , stated that the power (vested at that time in the County Court rather than the LVT) to

dispense with the requirements was to be exercised if it was “satisfied that the landlord acted reasonably”. When Parliament replaced that provision with section 20ZA(1) in 2002, it presumably intended a different test to be applied.

48. The distinction could also, I think, often lead to uncertainty. Views as to the gravity of a landlord's failure to comply with the requirements could vary from one LVT to another. And questions could arise as to the relevance of certain factors, such as the landlord's state of mind. The present case provides an example of the possible uncertainties. In para 99 of his judgment, Lord Wilson JSC understandably expresses a very unfavourable view of Daejan's failure in this case. However, to some people it might seem that Daejan's failure in the present case was not a “serious failing”, given that (i) the evidence of any resulting prejudice to the respondents is weak, (ii) Daejan adhered fully to stages 1 and 2, and to a significant extent to stage 3, (iii) Daejan did consult the respondents, through both REA and FPM, (iv) Daejan did some things which went beyond the requirements (eg employing REA at Ms Marks's request), and (v) Daejan did give summary details of the tenders even though it did not accord the respondents sight of the tenders themselves. So, too, views may differ as to whether Daejan should be blamed for not taking up the time of the LVT with attempts to excuse its failures, and as to whether it was an innocent misunderstanding or flagrant incompetence which caused Daejan's representatives to tell the LVT that the contract had been placed with Mitre weeks before it had been. (None of those points undermines the basic fact that there was an undoubted failure by Daejan to comply with the requirements.)

49. I also consider that the distinction favoured in the tribunals below could lead to inappropriate outcomes. One can, for instance, easily conceive of a situation where a “minor or excusable oversight” could cause severe prejudice, and one where a gross breach causes the tenants no prejudice. For instance, where the landlord miscalculates by a day, and places a contract for works a few hours before receiving some very telling criticisms about the proposed works or costings. Or,

on the other hand, where the landlord fails to get more than one estimate despite being reminded by the tenants, but there is only one contractor competent to carry out undoubtedly necessary works.

50. In their respective judgments, the LVT, the Upper Tribunal and the Court of Appeal also emphasised the importance of real prejudice to the tenants flowing from the landlord's breach of the requirements, and in that they were right. That is the main, indeed normally, the sole question for the LVT when considering how to exercise its jurisdiction in accordance with section 20ZA(1) . And it is fair to the courts below to add that where the landlord is guilty of “a serious failing” it is more likely to result in real prejudice to the tenants than where the landlord has been guilty of “a technical, minor or excusable oversight”.

51. It also follows from this analysis that I consider that Daejan is wrong in its contention that the financial consequences to the landlord of not granting a dispensation is a relevant factor when the LVT is considering how to exercise its jurisdiction under sections 20(1)(b) and 20ZA(1) . In that, I agree with the views of the courts below (although it can be said that such consequences are often inversely reflective of the relevant prejudice to the tenants, which is, as already mentioned, centrally important). It also seems to me that the nature of the landlord is not a relevant factor either, and I think that was the view of the Court of Appeal as well.

*52. As already indicated, I do not agree with the courts below in so far as they support the proposition that sections 20 and 20ZA were included for the purpose of “transparency and accountability”, if by that it is intended to add anything to the two purposes identified in section 19(1)(a)(b) . It is true that that proposition may arguably receive some support from Lewison J in *Paddington Basin Developments Ltd v West End Quay Estate Management Ltd* [2010] 1 WLR 2735 , para 26. However, I consider that there are no grounds for treating the obligations in sections 20 and 20ZA as doing any more than providing practical support for the two purposes identified in section 19(1) . The sections are not concerned with public law issues or public duties, so there is no justification for treating consultation or*

transparency as appropriate ends in themselves. Is the LVT faced with a binary choice on a section 20ZA(1) application?

53. The respondents contend that, on an application under section 20ZA(1) , the LVT has to choose between two simple alternatives: it must either dispense with the requirements unconditionally or refuse to dispense with the requirements. If this argument is correct, then as the Upper Tribunal held, and the Court of Appeal thought probable, it would not have been possible for the LVT in this case to grant Daejan's section 20ZA(1) application on the terms offered by Daejan, namely to reduce the aggregate of the sum payable by the respondents in respect of the works by £50,000.

54. In my view, the LVT is not so constrained when exercising its jurisdiction under section 20ZA(1) : it has power to grant a dispensation on such terms as it thinks fit—provided, of course, that any such terms are appropriate in their nature and their effect.

55. In the absence of clear words precluding the LVT imposing terms, I consider that one would expect it to have power to impose appropriate terms as a condition of exercising its power of dispensation. The circumstances in which an application could be made are, as already mentioned, potentially almost infinitely various, and, given the purpose of sections 20 and 20ZA , it seems unlikely that the LVT's powers could have been intended to be as limited as the respondents suggest.

*56. More detailed consideration of the circumstances in which the jurisdiction can be invoked confirms this conclusion. It is clear that a landlord may ask for a dispensation in advance. **The most obvious cases would be where it was necessary to carry out some works very urgently, or where it only became apparent that it was necessary to carry out some works while contractors were already on site carrying out other work. In such cases, it would be odd if, for instance, the LVT could not dispense with the requirements on terms which required the landlord, for instance, (i) to convene a meeting of the tenants at short notice to explain and discuss the necessary***

works, or (ii) to comply with stage 1 and/or stage 3, but with (for example) five days instead of 30 days for the tenants to reply.

57. Further, consider a case where a landlord carried out works costing, say, £1m, and failed to comply with the requirements to a small extent (eg in accidentally not having regard to an observation), and the tenants establish that the works might well *Daejan Investments Ltd v Benson*, [2013] 1 W.L.R. 854 (2013) have cost, at the most, £25,000 more as a result of the failure. It would seem grossly disproportionate to refuse the landlord a dispensation, but, equally, it would seem rather unfair on the tenants to grant a dispensation without reducing the recoverable sum by £25,000. In some cases, such a reduction could be achieved by the tenants invoking section 19(1)(b), but there is no necessary equivalence between a reduction which might have been achieved if the requirements had been strictly adhered to and a deduction which would be granted under section 19(1)(b) : see the next section of this judgment.

58. Accordingly, where it is appropriate to do so, it seems clear to me that the LVT can impose conditions on the grant of a dispensation under section 20(1)(b). In effect, the LVT would be concluding that, applying the approach laid down in section 20ZA(1), it would be “reasonable” to grant a dispensation, but only if the landlord accepts certain conditions. In the example just given, the condition would be that the landlord agrees to reduce the recoverable cost of the works from £1m to £975,000.

59. I also consider that the LVT would have power to impose a condition as to costs—eg that the landlord pays the tenants' reasonable costs incurred in connection with the landlord's application under section 20ZA(1).

60. It is true that the powers of the LVT to make an actual order for costs are very limited. The effect of paragraph 10 of Schedule 12 to the 2002 Act is that the LVT can only award costs (in a limited amount) (i) where an application is dismissed on the ground that it is frivolous, vexatious or an abuse of process, or (ii) where the applicant has “acted

frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings”.

61. *However, in my view, that does not preclude the LVT from imposing, as a condition for dispensing with all or any of the requirements under section 20(1)(b) , a term that the landlord pays the costs incurred by the tenants in resisting the landlord's application for such dispensation. The condition would be a term on which the LVT granted the statutory indulgence of a dispensation to the landlord, not a freestanding order for costs, which is what paragraph 10 of Schedule 12 to the 2002 Act is concerned with. To put it another way, the LVT would require the landlord to pay the tenants' costs on the ground that it would not consider it “reasonable” to dispense with the requirements unless such a term was imposed.*

62. *The case law relating to the approach of courts to the grant to tenants of relief from forfeiture of their leases is instructive in this connection. Where a landlord forfeits a lease, a tenant is entitled to seek relief from forfeiture. When the court grants relief from forfeiture, it will often do so on terms that the tenant pays the costs of the landlord in connection with the tenant's application for relief, at least in so far as the landlord has acted reasonably: see eg Egerton v Jones [1939] 2 KB 702 , 705– 706, 709. However, if and in so far as the landlord opposes the tenant's application for relief unreasonably, it will not recover its costs, and may even find itself paying the tenant's costs, as in Howard v Fanshawe [1895] 2 Ch 581 , 592.*

63. *As Mr Dowding QC, for Daejan, pointed out, in Factors (Sundries) Ltd v Miller [1952] 2 All ER 630 , the tenant was legally aided and the court was precluded by statute from making an order for costs against him, but the Court of Appeal held that there was none the less jurisdiction to require him to pay the landlord's costs as a condition of being granted relief from forfeiture. As Somervell LJ explained it, at p 633D–F, the liability under such a condition was “not an order to pay costs in the ordinary sense”, but “a payment of a sum equal to the costs as a condition of relief”.*

64. Like a party seeking a dispensation under section 20(1)(b) , a party seeking relief from forfeiture is claiming what can be characterised as an indulgence from a tribunal at the expense of another party. Accordingly, in so far as the other party reasonably incurs costs in considering the claim, and arguing whether it should be granted, and, if so, on what terms, it seems appropriate that the first party should pay those costs as a term of being accorded the indulgence. The correct approach to prejudice to the tenants

65. Where a landlord has failed to comply with the requirements, there may often be a dispute as to whether, and if so to what extent, the tenants would relevantly suffer if an unconditional dispensation was accorded. (I add the word “relevantly”, because the tenants can always contend that they will suffer a disadvantage if a dispensation is accorded; however, as explained above, the only disadvantage of which they could legitimately complain is one which they would not have suffered if the requirements

had been fully complied with, but which they will suffer if an unconditional dispensation were granted.)

66. It was suggested by Mr Rainey and Mr Fieldsend that the determination of such a question would often involve a very difficult exercise (or “an invidious exercise in speculation” as *Gross LJ [2011] 1 WLR 2330* , para 73 put it in the Court of Appeal) and would frequently be unfair on the tenants. It may occasionally involve a difficult exercise, but the fact that an assessment is difficult has never been regarded as a valid reason for the court refusing to carry it out (although in some cases disproportionality may be a good reason for such a refusal). While each case must, inevitably, be decided on its particular facts, I do not think that many cases should give rise to great difficulties.

67. As to the contention that my conclusion would place an unfair burden on tenants where the LVT is considering prejudice, it is true that, while the legal burden of proof would be, and would remain throughout, on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered would be on

the tenants. However, given that the landlord will have failed to comply with the requirements, the landlord can scarcely complain if the LVT views the tenants' arguments sympathetically, for instance by resolving in their favour any doubts as to whether the works would have cost less (or, for instance, that some of the works would not have been carried out or would have been carried out in a different way), if the tenants had been given a proper opportunity to make their points. As Lord Sumption JSC said during the argument, if the 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 LVT 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 an LVT would be likely to accept that the tenants had suffered prejudice.

68. The LVT should be sympathetic to the tenants not merely because the landlord is in default of its statutory duty to the tenants, and the LVT is deciding whether to grant the landlord a dispensation. Such an approach is also justified because the LVT is having to undertake the exercise of reconstructing what would have happened, and it is because of the landlord's failure to comply with its duty to the tenants that it is having to do so. For the same reasons, the LVT should not be too ready to deprive the tenants of the costs of investigating relevant prejudice, or seeking to establish that they would suffer such prejudice. This does not mean that LVT should uncritically accept any suggested prejudice, however far-fetched, or that the tenants and their advisers should have carte blanche as to recovering their costs of investigating, or seeking to establish, prejudice. But, once the tenants have shown a credible case for prejudice, the LVT should look to the landlord to rebut it. And, 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.

69. Apart from the fact that the LVT should be sympathetic to any points they may raise, it is worth remembering that the tenants' complaint will normally be, as in this case, that they were not given the requisite opportunity to make representations about proposed works to the landlord. Accordingly, it does not appear onerous to suggest that 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 LVT, and they are likely to have their costs of consulting a surveyor and/or solicitor paid by the landlord.

Overview of the analysis so far

70. Before turning to the disposition of this appeal, it is worth considering the effect of the conclusions I have reached so far.

71. If a landlord fails to comply with the requirements in connection with qualifying works, then it must get a dispensation under section 20(1)(b) if it is to recover service charges in respect of those works in a sum greater than the statutory minimum. In so far as the tenants will suffer relevant prejudice as a result of the landlord's failure, the LVT should, at least in the absence of some good reason to the contrary, effectively require the landlord to reduce the amount claimed as service charges to compensate

the tenants fully for that prejudice. That outcome seems fair on the face of it, as the tenants will be in the same position as if the requirements have been satisfied, and they will not be getting something of a windfall.

72. On the approach adopted by the courts below, as the Upper Tribunal said at the very end of its judgment, [2010] 2 P & CR 116, para 62, requiring the landlord to limit the recoverable service charge to the statutory minimum in a case such as this "may be thought disproportionately damaging to the landlord, and disproportionately

advantageous to the lessees". That criticism could not, it seems to me, be fairly made of the conclusion I have reached.

73. However, drilling a little deeper, if matters rested there, the simple conclusion described in para 71 could be too favourable to the landlord. It might fairly be said that it would enable a landlord to buy its way out of having failed to comply with the requirements. However, that concern is, I believe, answered by the significant disadvantages which a landlord would face if it fails to comply with the requirements. I have in mind that the landlord would have (i) to pay its own costs of making and pursuing an application to the LVT for a section 20(1)(b) dispensation, (ii) to pay the tenants' reasonable costs in connection of investigating and challenging that application, (iii) to accord the tenants a reduction to compensate fully for any relevant

prejudice, knowing that the LVT will adopt a sympathetic (albeit not unrealistically sympathetic) attitude to the tenants on that issue.

74. All in all, it appears to me that the conclusions which I have reached, taken together, will result in (i) the power to dispense with the requirements being exercised in a proportionate way consistent with their purpose, and (ii) a fair balance between (a) ensuring that tenants do not receive a windfall because the power is exercised too sparingly and (b) ensuring that landlords are not cavalier, or worse, about adhering to the requirements because the power is exercised too loosely.

36. *Daejan* was followed in *Aster Communities v Chapman* [2020] UKUT 6 WLUK 215, the Upper Tribunal **found that** in the context of a landlord seeking to recover, through the service charge to its lessees, the costs of repair and maintenance works to the leased premises, the First-tier Tribunal's wide discretion to impose conditions when granting the landlord dispensation from its consultation obligations under the Landlord and Tenant Act 1985 s.20 extended to requiring the landlord to pay the lessees' reasonable costs of instructing an expert to comment on the appropriateness of the works.

Decision

36. Having set out the case in some considerable detail (this was deliberate to ensure that all of the arguments put forward by both sides were summarised) the Tribunal can deal with the decision in short order. The reason for this is that it has no doubt what the proper decision is. The proper decision is that the Applicants should be given dispensation unconditionally. The reason for this is the urgency of the situation that the Applicants found themselves in in March 2020. They were planning to carry out a properly consulted programme of boiler replacements in the building. This was notified to Cameron Marshall before he purchased albeit in short form. The other leaseholders were notified of these proposals and indeed the consultation process had started.

37. It is regrettable that Cameron Marshall was not identified as a new leaseholder earlier. However this cannot found a objection to dispensation. Were it the case that all of the leaseholders had not been notified of the works in a timely fashion then such an argument may work. The fact that one individual leaseholder was not notified until 6 April 2020 cannot mean that dispensation must be refused. Similarly when the Applicants sought as a gesture of goodwill to in effect sever Cameron Marshall from the dispensation application this is not possible because dispensation applies to and affects all leaseholders. It cannot be the case that one individual leaseholder can seek to object to this dispensation as a result of the fact that in his individual case he did not receive the relevant early-stage consultation letters. This would be entirely impractical to manage. Daejan did not envisage this situation neither did the other case.

38. The other weakness in Mr Marshall QC's argument is that it fails to engage with the urgency of the situation that faced the Applicants at the relevant time. He seeks to argue that April was a warm month and that therefore the leaseholders would not require heating. He seeks to argue that one boiler would be sufficient to maintain the building until such time as the other boilers were replaced via a full consultation process.

He seeks to argue that had he or his son been given notice of the plans in February 2020 he would have sought quotes from Green Flame to carry out the works.

39. However the Applicants were not simply facing the problems associated with unhappy leaseholders who have no heating and hot water they were also facing very real risks as a result of Legionella and a fire risk. Notwithstanding the urgency of the situation the Applicants sought to keep the leaseholders informed. One of the reasons why the tribunal has set out the correspondence in some detail is to outline the fact that the Applicants did notify the leaseholders of what was going on. They did not simply carry on with the work without giving any notification. Indeed they had started the consultation process and the tribunal has found that the statement of estimates was sent to Mr Marshall QC on 6 April 2020. In the face of this urgent situation it is fanciful to suggest that the applicants should have done any more than what they did. Even if Cameron Marshall had had the opportunity to put forward Green Flame as a contractor and even if this would perhaps have affected the ultimate cost of the work this ignores the fact that by March the situation had changed and had become extremely urgent such that the Applicants had to act in the way that any responsible landlord would have acted .

40. A small passage of *Daejan* has been highlighted above. Whilst it was said during the hearing that *Daejan* did not address the issue of urgency in fact Lord Neuberger does address this issue in the passage highlighted. In the Tribunal's experience urgent applications for dispensation form the majority of the applications to the tribunal. A landlord seeks dispensation because it simply does not have time to carry out a full consultation process because there is an urgent situation as a result of say a leaking roof, a fire risk, defective access to the building, or other problems which are affecting the integrity of the building. In many cases dispensation will be given without any conditions in these scenarios because the landlord will have satisfied

the Tribunal that although the full consultation process has not been carried out the leaseholders have been kept informed of the situation. In many cases leaseholders do not object to dispensation because they understand the urgency of the situation. The passage from *Daejan* deals with this situation.

41. The Tribunal considers that the Applicants in the present case effectively complied with conditions in the passage from *Daejan* above. They had started the consultation process and they had kept the leaseholders informed of the work that was being carried out. They had no objections until Mr Marshall QC became involved when the work had already started. Accordingly the tribunal is of the view that the present case comes within the type of case that is referred to in the passage highlighted above. Further there is no need to impose conditions on the applicants in return for dispensation because they have effectively complied with the sort of conditions that the Tribunal might impose i.e. starting the consultation process and keeping the leaseholders informed.

42. Mr Marshall QC seeks conditions requiring his son to only be liable for £250 and for his sons costs to be paid. The Tribunal has already dealt with the difficulty of severing case in this way. The Applicants as a gesture of goodwill agreed not to charge his son more than £250 for his contribution to the boiler works. This gesture was refused because they wouldn't also pay the costs. The Tribunal has already indicated that it considers that this was an unreasonable stance to take. The reason for this is that the Tribunal considers that the objection to dispensation brought by Mr Marshall QC on behalf of his son was unreasonable. The objection developed over time as the Applicants raised issues with it. First of all it was said that Cameron Marshall was prejudiced as a result of the fact that he was unable to secure an indemnity in relation to the boiler works. When the applicant highlighted the fact that this was not the sort of prejudice identified by Lord Neuberger in *Daejan*, Mr Marshall QC then said it was in fact an issue of the lost opportunity to

bring in Green Flame. There followed a series of statements of case, legal arguments etc, none of which engaged with the central issue of the urgency facing the landlord.

43. In the circumstances the case should have settled in November 2020 and the only reason it didn't was Mr Marshall's QCs entrenched position in relation to his son's costs.

44. Accordingly the tribunal decides that the Applicants' application is allowed. They are entitled to dispensation for the works proposed without any conditions applied.

Judge Shepherd
April 2021

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 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).