FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BF/LDC/2022/0092**
Property	**:**	**40 St James Road, Sutton, London SM1 2TN**
Applicant	**:**	**Southern Land Securities Ltd**
Representatives	**:**	**Together Property Management, Elly Chatzimanoli**
Respondents	**:**	**The 5 leaseholders of flats 4-8**
Type of Application	**:**	**Application for the dispensation of consultation requirements pursuant to S. 20ZA of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Duncan Jagger MRICS**
Date of Determination and Decision	**:**	**1st September 2022**

Decisions of the Tribunal

(1) The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act).

(2) The reasons for the Tribunal's decision are set out below.

The background to the application

1. The property is an extended semi detached Victorian building with which has been converted to form five self contained flats.

2. The tribunal did not inspect the property as it considered the documentation and information before it in the set of documents prepared by the Applicants Managing Agents which enabled the tribunal to proceed with this determination

3. This has been a paper hearing which has been consented to by the parties. The documents that were referred to are prepared by the applicant, plus the tribunals directions the contents of which we have recorded. Therefore, the tribunal had before it a bundle of documents prepared by the applicant which run to 43 pages, in accordance with previous amended directions.

4. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act, (see the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987), Schedule 4.) The request for dispensation concerns urgent works for the demolition of a 2.4 metre brick boundary wall. The application is said to be urgent, as the works are necessary as the wall is leaning and nearing collapse and poses a safety risk to the residents of the subject property and the neighbouring property.

5. The application is said to be extremely urgent, as the demolition works were necessary to prevent a safety risk. The works were competed on 7th October 2021by Maxpen Services Ltd at a cost of £3000 inclusive of VAT.

6. 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.

7. The amended Directions on 30th June 2022 required any of the 5 tenants who opposed the application to make their objections known on the reply form produced with the Directions.by the 28th July 2022 The Tribunal has not been made aware of any objections by this date.

8. The application confirms that the cost of the works was £3000 inclusive of VAT following receipt of an invoice dated 9th October 2021.

9. The Decision

10. By Directions of the tribunal dated 24th May 2022 and 30th June 2022 it was decided that the application be determined without a hearing or by way of a video hearing.

11. The issues

12. 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.**

13. Having read the evidence and submissions from the Applicant and having considered all of the documents and grounds for making the application provided by the applicants, the Tribunal determines the dispensation issues as follows.

14. 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.

15. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by such an application as is this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.

16. 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.

17. 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.

16. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.

17. The tribunal is of the view that, taking into account that there were no objections from the 5 leaseholders, it could not find prejudice to any of the leaseholders of the property by the granting of dispensation relating to the essential roof works as set out in the documentation in the bundle submitted in support of the application.

18. The Tribunal was mindful of the fact that the works were undertaken by the applicant supported by managing agents and with a proper invoice submitted by Mazpen Services Ltd dated 9th October 2021 for the sum of £3000 including VAT and that therefore dispensation is wholly appropriate. It is noted that this application is only in connection with the demolition of the wall and the Managing Agents have commenced the consolation process for the rebuilding of the wall.

19. The Managing Agents and the contractors believe that the works were vital in order to prevent collapse of the leaning brick boundary wall. On the evidence before it the Tribunal agrees with this conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application. It must be the case that the applicant must ensure that the boundary walls are properly maintained to the satisfaction of the leaseholders in accordance with the terms of the lease .The demolition of the boundary wall was therefore carried out as a matter of urgency, hence the decision of the Tribunal.

20. Rights of appeal made available to parties to this dispute are set out in an Annex to this decision.

21. The applicants shall be responsible for formally serving a copy of the tribunal's decision on all five leaseholders named on the schedule attached to the application. Furthermore, the applicants Managing Agent shall place a copy of the tribunal's decision on dispensation together

with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. Copies must also be placed in a prominent place in the common parts of the buildings. In this way, leaseholders who have not returned the reply form may view the tribunal's eventual decision on dispensation and their appeal rights.The Tribunal requests the applicants managing agent to confirm to the Tribunal this has been carried out.

Name: Mr D Jagger MRICS **Date:** 1st September 2022

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.