FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LDC/2020/0211**
HMCTS Code	**:**	**P: Paper remote**
Property	**:**	**Flats 1-28, 1 Lanercost Close, London, SW2 3DS**
Applicant	**:**	**The Mayor and Burgesses of the London Borough of Lambeth**
Representative	**:**	**Homeownership Services**
Respondents	**:**	**7 Leaseholders as per the application**
Representative	**:**	**In person**
Type of application	**:**	**For dispensation under section 20ZA of the Landlord & Tenant Act 1985**
Tribunal members	**:**	**Tribunal Judge Hamilton-Farey Tribunal Member Crane**
Date of determination	**:**	**15 March 2021**
Date of decision	**:**	**15 March 2021**

DECISION

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Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers, which has been consented to by the Applicant and not objected to by the Respondents. The form of remote hearing was P: PAPER REMOTE. A face-to-face hearing was not held because it was not practicable, and no one requested the same.

Introduction

1. The Applicant makes an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") for retrospective dispensation from the consultation requirements imposed by section 20 of the Act.

2. Flats 1-28, 1 Lanercost Close, London, SW2 3DS ("the property") is a mixed tenure block, containing 7 flats sold on long leases. It is assumed that the remainder of the flats are occupied by tenants of the applicant.

3. The applicant says that a Qualifying Long-Term Agreement ("QLTA") has been in place for several years, and that a fully compliant S.20 Consultation process took place at that time. The works were carried out between July and October 2020.

4. The dispensation sought relates to the failure of the applicant to respond to a leaseholder's observations within the 21 days permitted under the Regulations.

5. The applicants says that it received a complaint of falling masonry from one of the balconies to the block. A survey was carried out and it was identified that works were required to all balconies. The consultation under S20 of the Act was undertaken, with one leaseholder responding to query why the works could not be carried out under the applicants' insurance policy.

6. The leaseholder's response was initially treated as a complaint under the applicant's complaints process, but when it was realised that it was an observation under S.20, the correct response was sent, but this was not within the 21 days provided for within the Regulations.

7. The Tribunal is told that the works had not been started when the response was sent, and the applicant believes that they answered the query to the leaseholder's satisfaction. They also say that further S.20 procedures could not be undertaken due to the urgency of the situation and the need to remove and repair falling masonry.

8. Directions were issued by the tribunal on 14 December 2020 and amended on 5 January 2021. These required the applicant to serve a copy of the application and the directions on each of the respondent leaseholders. Within the directions was a 'reply form' that leaseholders who objected to the grant of dispensation, could complete, and return to the applicant and tribunal.

9. Any leaseholder who objected to the application could then submit a bundle of documents on which they wished to rely.

10. None of the respondents replied directly to the tribunal.

11. The applicant produced a bundle to be used for the determination. Within that bundle was a copy of the Notice of Intention dated 3 July 2020, and a further Notice of the same date informing the respondents of the cost of those works. The notices informed the respondents that they had the right to make observations and any such observations would be responded to within 21 days of receipt.

12. On 8 July 2020, one of the leaseholders responded to say that *'if this was a private property, I would be claiming this on the buildings insurance. Is it not possible for Lambeth to do the same rather than charge residents for what surely should be something potentially life threatening, that could have been avoided by regular maintenance? I am surprised that it wasn't spotted by Keepmoat when they did their drone survey in 2017.'*

13. The applicant responded on 14 August to confirm that this was not an insured peril and that a repair and maintenance issue. It does not appear that any further correspondence was received from the leaseholder.

14. The applicant says that none of the respondents objected to the works, nor have they demonstrated any grounds for relevant prejudice by the applicant's failure to comply with the Regulations.

Relevant Law

15. This is set out in the Appendix annexed hereto.

Decision

16. The determination of the application took place on 15 March 2021 without an oral hearing. It was based solely on the statements of case and other documentary evidence filed by the Applicant.

12. The relevant test to the applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.

13. The issue before the Tribunal was whether retrospective dispensation should be granted in relation to requirement to serve a response to an

observation by a leaseholder within 21 days. In considering whether dispensation should be granted, the tribunal is not concerned about the actual cost that has been incurred.

14. The tribunal granted the application the following reasons:

    (a) the Tribunal is satisfied that the works were urgently required, due to the danger of falling masonry onto public areas.

    (b) the applicant had complied with the S.20 consultation process in relation to the QLTA Contract from which these works were carried.

    (c) the tribunal is satisfied that the respondents were informed of the necessary repairs via the Notice of Intention, and only one commented regarding the possibility of making an insurance claim.

    (d) the tribunal is satisfied that the respondents have been served with the application and the evidence in support and there has been no objection from any of them.

    (d) importantly, the real prejudice to the respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred.

15. The tribunal, therefore, concludes that the respondents were not prejudiced by the Applicant's failure reply to one of the respondents within 21 days, and therefore grants the application.

16. It should be noted that in granting this part of the application, the tribunal makes no finding that the scope and estimated cost of the repairs are reasonable.

Name:	Tribunal Judge Hamilton-Farey	**Date:**	15 March 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).

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.