



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

**Case reference** : **LON/00BK/LDC/2022/0163**

**HMCTS Code** : **P:PAPERREMOTE**

**Property** : **Avenue Gardens Estate, London W10**

**Applicant** : **Westminster City Council**

**Representative** : **Andrew Pye, Leasehold Litigation Team Manager, Westminster City Council**

**Respondents** : **The Leaseholders of Avenue Gardens Estate, London W10**

**Type of application** : **An application for dispensation from the consultation requirements of s.20 Landlord and Tenant Act 1985**

**Tribunal member** : **Judge D Brandler**

**Date determination** : **21<sup>st</sup> November 2022**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined on paper. The documents that I was referred to are in an electronic bundle prepared by the applicant containing 472 pages. References in this decision are to page numbers in square brackets. The order made is described at the end of these reasons.

## Decision

1. The Tribunal grants the Applicant retrospective dispensation from the statutory consultation requirements in respect of additional remedial works. Those works involve the replacement of the existing secondary system including the heating and hot water services within the central boiler plantroom and the existing district heating main pipework on Avenue Gardens Estate, London W10 ("the Estate").

## Background to the Application

2. The Tribunal did not inspect the building as it considered the documentation and information before it in the appeal bundle enabled the Tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.
3. This has been a paper hearing which has not been objected to by the parties. The Tribunal had before it an electronic bundle prepared by the applicant in accordance with the Tribunal's directions issued on 29<sup>th</sup> September 2022 [30].
4. The Applicant landlord seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from the consultation requirements imposed on the landlord by section 20 of the 1985 Act in respect of additional heating works as part of the Avenue Gardens Heating Pipework Replacement Works (project AC250).
5. In March 2022 the Applicant landlord commissioned GEM Environmental Building Services ("GEM") to carry out some repairs to the heating pipework at the Estate under a s.20 consultation. During those works they identified the need for more extensive works. This was because of *"a number of leaks on the distribution pipework causing the system to run at full capacity with a higher risk of corrosion to the pipes. A number of seized and defective isolation valves have also been identified and have prevented us from carrying out ad-hoc repairs. As a result, we now need an emergency major works programme to resolve the issues as quickly as possible to ensure residents have an effective heating and hot water supply for the winter season"* [77].
6. The works are said to be urgent because the problems with the pipework were worse than expected and as a result an emergency major works programme is required to resolve the issues. This includes replacement of the existing secondary system including the heating and hot water services within the central boiler plantroom and the existing district heating main pipework on the Estate. Due to the emergency nature of the works, the s.20 Notice consultation was shorter than would normally be required.

7. A letter was sent to all the leaseholders on 25/04/2022 by the Resident and Advocacy team advising them of the proposed heating and piping works. A schedule 3 consultation Section 20 Notice was also issued to all leaseholders on 17<sup>th</sup> June 2022.
  
8. On 04/10/2022 the Applicant landlord wrote to the leaseholders to advise them of their application for partial Dispensation from the requirements of the Section 20 Consultation process. That is in respect of the replacement of the existing secondary system including the heating and hot water services within the central boiler plantroom and the existing district heating main pipework on the Estate.
  
9. The Estate consists of 11, 4-storey blocks which contain a mixture of flats and maisonettes built circa 1978/79. The blocks are of brick construction, concrete floor and flat roof with mansard pitched roof sections to the front and rear elevations finished with slate tiles. Gables extend up to the flat roof level and form a small parapet. Parapets are located at all individual property lines which includes walls adjacent to private balconies. Balconies and walkways are concrete with an asphalt waterproof layer which are overlaid with either insulation and paving slabs or just paving slabs. Windows are uPVC, private balconies have a uPVC patio style lazed door and property entrance doors are a mixture of timber, composite and metal clad doors.

### **The leaseholders' case**

10. Objections to this application have been received from the following leaseholders Ms Wilkins, Mr Fitzpatrick, Ms Chalmers, Mr Ahouie. The objections are similar in nature and include the following :
  - Failure to communicate by the Applicant, particularly from the leaseholder department; non-attendance by the leaseholder department at residents' meetings in June 2022; lack of responses to the leaseholders' queries [90]; failure to send out post promptly (eg. a letter dated 17<sup>th</sup> June arriving on 24<sup>th</sup> June) [95]
  - Failure to provide the requisite period for consultation required for s.20
  - That it is unreasonable to dispense with the statutory consultation requirements which deprived the leaseholders of a reasonable amount of time to submit observations; the AC250 project has resulted in a reduction in quality of life, increased time burden in dealing with poor site management, and increased emotional burden, as well as negative financial implications [461]
  - Failure by the Applicant to properly manage the estate which resulted in project AC250 not being properly planned in advance [461]

- Failure by the Applicant to maintain the pipes for the past 40 years, which are now said to be at 'end of life'; The lack of maintenance to the pipework over its lifespan and the lack of preparation for reaching its end-of-life state has meant that the result is a *“hurried and chaotic process to push the costs caused by WCC’s lack of maintenance and planning onto the leaseholders, at a time when they’re also being asked to pay increased costs for other planned major works projects”* [91].
- Questioning as to why the heating pipework was not brought into the W103 major works project where it could have been considered, quoted for, with a full Section 20 process carried out and an appropriate contractor found [91]
- The scope of works provided by the section 20 notice is insufficient with no detail on how most of the work will take place and is not properly costed for [92]
- The cost of works quoted with GEM contractor is unduly excessive and asking for evidence that the Applicant obtained three compliant tender responses and that the award of the contract was judged to be the best value; [95]
- That the Applicant’s project management costs and billing and consultation fee are excessive and do not represent good practice. [95]
- Failure by the Applicant to arrange further meetings for residents to present their views to the Applicant [95]
- Questioning as to why works are considered an emergency when the Applicant has been aware of the need for these works and planning for them for a number of years; why they were not included as part of the boiler replacement works carried out in 2019 or part of the major works scheme W103 to achieve best value for leaseholders [97]

11. The Applicant’s responses to these complaints are in essence:

- In recent months, the leaks have increased and the situation has become more urgent, for this reason it has been agreed that the works need to be carried out as soon as possible [94]. The urgency relates to the requirement to complete works before the winter season [98]
- *“The works to the heating and hot water system would not have been included in the planning for project W103 as the type of work is very different to wider block repairs”*
- A 5% contingency is included for unforeseen events over and above the making good of excavated areas.
- The heating system continues to receive day to day maintenance but that does not cover the scope of the works planned, which will be recharged under scheme AC 250.
- the 9 days for observations was due to the urgent nature of the repairs and confirming that works had already started on site and explaining that is the need for the application for exemption.

- There is no requirement to obtain tenders from different contractors because having entered into a Qualified Long Term Agreement with GEM since 2018 to repair and maintain the heating system, which had been subject to a previous consultation [96]
  - in relation to the lack of further meetings, the Applicant explains that because these works had already commenced in order to complete them before the winter season, they didn't believe a resident meeting was required. [96]
12. The Applicant has confirmed that service of the application has carried out. One of the leaseholder's objects that this was not correct service because the way the Applicant displayed the Tribunal documentation, that it was not available for the whole period, nor was it weatherproof. The Applicant responded explaining that the documentation was displayed in noticeboards, some of which were external and so were encased in plastic wallets, and that all the relevant documents were included for the attention of the leaseholders.

### **Reasons for Decision**

13. 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.**
14. Having read the evidence and submissions from the applicant and a number of respondent leaseholders, the Tribunal determines the dispensation issues as follows.
15. 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.
16. 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.
17. The leading authority in relation to s.20ZA dispensation requests is *Daejan Investments Ltd v Benson* [2013] 1 WLR 854 ("Benson") in which the Supreme Court set out guidance as to the approach to be taken by a tribunal when considering such applications. This was to focus on the extent, if any, to which the lessees were prejudiced in either paying for inappropriate works or paying more than would be appropriate, because of the failure of the landlord to comply with the

consultation requirements. In his judgment, Lord Neuberger said as follows;

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.

18. 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.
19. In the objections set out by the leaseholders none deny that the works were required. Only one questioned why they should be considered “an emergency” because the Applicant knew about issues for some years. Much has been made of poor management, lack of maintenance of pipes until they are at ‘end of life’, disruption to the leaseholders due to the works, the emotional upheaval and the financial burden upon them. There were questions about the amount charged and why the leaseholders should be burdened for additional works when they are already burdened with high service charges for other projects. These issues were responded to by the Applicant as detailed above.
20. None of the objections clarified in what way a full consultation period would have assisted them in obtaining a different, better, cheaper service for what they do not appear to dispute was essential. These are all issues which may become relevant for the leaseholders in any application they may decide to make in relation to whether service charges are reasonable and payable. That is not an issue for the Tribunal today.
21. The Tribunal is of the view that, taking into account that the urgent works are issues that arose during the course of planned works, that the

urgency was to avoid interruption and/or lack of heating and hot water to residents during the upcoming winter months, it could not find prejudice to them by the granting of dispensation relating to the additional remedial works, as set out in the application.

22. As stated above, 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.**
23. The Tribunal grants the applicant retrospective dispensation from the statutory consultation requirements in respect of additional remedial works at the Avenue Gardens Estate, London W10.
24. The Tribunal makes the following condition of such dispensation:
  - (a) The applicant shall be responsible for formally serving a copy of the Tribunal's decision on all leaseholders of the flats.

**Judge D Brandler**

**21<sup>st</sup> November 2022**

**APPENDIX 1**  
**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.



**APPENDIX 2**  
**RELEVANT LEGISLATION**

**Landlord and Tenant Act 1985**

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.

**Service Charges (Consultation Requirements) (England) Regulations 2003.**

**Part 2 - consultation requirements for qualifying works for which public notice is not required**

*Notice of intention*

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—
  - (a) to each tenant; and
  - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall—
  - (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
  - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
  - (c) invite the making, in writing, of observations in relation to the proposed works; and
  - (d) specify—

- (i) the address to which such observations may be sent;
  - (ii) that they must be delivered within the relevant period;  
and
  - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

*Inspection of description of proposed works*

- 2.** (1) Where a notice under paragraph 1 specifies a place and hours for inspection—
- (a) the place and hours so specified must be reasonable; and
  - (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

*Duty to have regard to observations in relation to proposed works*

- 3.** Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

*Estimates and response to observations*

- 4.** (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a

recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—
  - (a) from the person who received the most nominations; or
  - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
  - (c) in any other case, from any nominated person.
  
- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—
  - (a) from at least one person nominated by a tenant; and
  - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).
  
- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
  - (a) obtain estimates for the carrying out of the proposed works;
  - (b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—
    - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
    - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

- (c) make all of the estimates available for inspection.
- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
  - (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
  - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
  - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
  - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
  - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
  - (a) each tenant; and
  - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—

- (a) specify the place and hours at which the estimates may be inspected;
  - (b) invite the making, in writing, of observations in relation to those estimates;
  - (c) specify—
    - (i) the address to which such observations may be sent;
    - (ii) that they must be delivered within the relevant period; and
    - (iii) the date on which the relevant period ends.
- (11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

*Duty to have regard to observations in relation to estimates*

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

*Duty on entering into contract*

6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—
- (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
  - (b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.