



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

**Case reference** : LON/00BE/LDC/2015/0108

**Property** : **Multiple properties at Baldock House, Keswick House, Mitcham House, Pinner House, Widecombe House and Witham House, Crawford Road, London SE5**

**Applicant** : **London Borough of Southwark**

**Respondent** : **Various leasees on the Crawford Housing Estate, London SE5 (“the Estate”) at Baldock House, Keswick House, Mitcham House, Pinner House, Widecombe House and Witham House**

**Type of application** : **To dispense with the requirement to consult leasees about major works**

**Tribunal** : **Judge Nicol  
Mrs SF Redmond BSc (Econ) MRICS**

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

**Date of hearing** : **2<sup>nd</sup> December 2015**

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**DECISION**

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The Tribunal has determined that the Applicant shall be granted dispensation from the statutory consultation requirements in relation to the major works on the Crawford Estate.

**Reasons**

1. On 19<sup>th</sup> August 2015 the Tribunal determined that the Applicant had failed to comply with the consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation

Requirements) (England) Regulations 2003 in relation to major works they were conducting on all blocks on the Crawford Estate in south London. In particular:

- (a) The consultation notice dated 1<sup>st</sup> August 2013 did not include windows in the list of proposed works.
  - (b) This error was not sufficiently corrected by the mention of windows in the section of the same letter which set out the justification for the works.
  - (c) The Applicant realised their mistake and sent out a letter on 3<sup>rd</sup> September 2013 addressing it. The Tribunal doubted it was received but, in any event, it was also not sufficient as it did not allow for the full consultation period.
2. The Tribunal pointed out that, unless the Applicant sought and obtained dispensation from the statutory consultation requirements under section 20ZA of the Landlord and Tenant Act 1985, their recoverable costs would be limited to £250 for each lessee. The Applicant has duly applied for dispensation.
  3. The Tribunal issued directions on 30<sup>th</sup> September 2015, as a result of which a bundle of documents was sent to every lessee. The hearing was initially set for 18<sup>th</sup> November 2015 but was then moved to 2<sup>nd</sup> December 2015.
  4. The hearing was attended by Mr Peter Cremin and Mr Trevor Wellbeloved on behalf of the Applicant and, from the Respondents:
    - Ms Winsome Bailey, lessee of 34 Witham House.
    - Mr Alan Brown, on behalf of his daughter, Stefanie Brown, lessee of 5 Witham House. He also sent in written representations by letter dated 19<sup>th</sup> November 2015.
    - Ms Sarah-Ann Evans, lessee of 30 Keswick House. She also sent in written representations by letter dated 9<sup>th</sup> November 2015.
    - Mr Simon Kitchen, lessee of 29 Keswick House.
    - Ms Esther Olaiya, lessee of 15 Mitcham House, who was the applicant in the previous Tribunal case.
    - Mr Robert Green, lessee of 31 Witham House. He also sent in a letter dated 22<sup>nd</sup> November 2015 on behalf of himself and Ms Olaiya.
    - Mr Joseph Ramsey, lessee of 34 Witham House.
    - Ms Heather Woolcock, on behalf of her father, Mr Michael Woolcock, lessee of 25 Witham House.
  5. Section 20ZA says that the Tribunal may dispense with the statutory consultation requirements if satisfied that it is reasonable to do so. The Supreme Court explained this power in detail in *Daejan Investments Ltd v*

*Benson* [2013] UKSC 14; [2013] 1 WLR 854, a copy of which was included in the hearing bundle. They stated that the purpose of section 20ZA is to ensure that lessees are not required to pay for services which are unnecessary or defective or to pay more than they should. Therefore, the Tribunal must focus on the extent to which lessees were prejudiced in either respect by a failure to comply with the consultation requirements. If the extent, quality and cost of the works were not affected, it is difficult to see why dispensation should not be granted. The only disadvantage of which lessees may 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.

6. Mr Cremin's case, on behalf of Southwark, was simple. He admitted the error identified by the previous Tribunal but asserted that it made no difference. Through the other references to the windows, lessees were not misled by their omission at the forefront of the consultation notice. This was demonstrated by the fact that several lessees did make representations in relation to the windows during the consultation process.
7. The difficulty for the lessees was that they had not identified any prejudice arising from Southwark's failure to comply with the consultation requirements. The Tribunal took pains to explain the law as laid down by the Supreme Court in *Daejan* and the lessees were given a short adjournment to consider this. From the subsequent discussion, two things were clear.
8. Firstly, the lessees were unaware of the law in *Daejan* until the Tribunal explained it. Secondly, the lessees had genuine concerns as to whether the costs of some of the works were reasonably incurred and whether the Applicant had done all they could to explain the works to them. For example, Mr Brown complained that part of the reason why the windows needed replacing was inadequate maintenance in the past. Ms Evans also queried whether works to her balcony were necessary but the Applicant's response then appeared to contradict the nature of the works later carried out.
9. However, the Tribunal explained that this application did not deal with whether the costs had been reasonably incurred. The Applicant is currently conducting a consultation process prior to the issue of the final account to try to pick up issues such as those mentioned by Mr Brown and Ms Evans. If any lessee remains dissatisfied and believes they can show that costs were not reasonably incurred, it remains open to them to make their own application to the Tribunal later on that issue.
10. The fact is that the evidence before the Tribunal shows that the Applicant's error on the consultation did not inhibit any lessee from making relevant representations. Further, there is no evidence that any prejudice resulted from that error. In the circumstances, the only option reasonably open to the Tribunal is to grant the dispensation sought.

**Name:** NK Nicol

**Date:** 2<sup>nd</sup> December 2015