



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

**Case reference** : **LON/00AG/LDC/2021/0007P**

**Property** : **36 Fitzjohn's Avenue, London NW3  
5NB**

**Applicant** : **36 Fitzjohn's Avenue Limited**

**Representative** : **The Heathgate Group**

**Respondents** : **The five leaseholders as listed in  
the application**

**Type of application** : **Dispensation from compliance with  
statutory consultation  
requirements**

**Tribunal member** : **Judge P Korn**

**Date of decision** : **16<sup>th</sup> March 2021**

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**DECISION**

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**Description of hearing**

This has been a remote hearing on the papers. The form of remote hearing was **P**. An oral hearing was not held because the Applicant confirmed that it would be content with a paper determination, the Respondents did not object and the tribunal agrees that it is appropriate to determine the issues on the papers alone. The documents to which I have been referred are in an electronic bundle, the contents of which I have noted. The decision made is described immediately below under the heading "Decision of the tribunal".

## **Decision of the tribunal**

The tribunal dispenses unconditionally with those of the consultation requirements not complied with by the Applicant in respect of the qualifying works which are the subject of this application.

## **The application**

1. The Applicant 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 relation to certain qualifying works.
2. The qualifying works which are the subject of this application comprise works to the boiler room, including the removal of an old cylinder, the removal of asbestos, and decontamination works. As at the date of the application the works had not yet commenced.
3. The Applicant is the freehold owner of the Property, which comprises a house converted into 5 flats. The Respondents are the long leaseholders of the flats.

## **Applicant’s case**

4. At the date of the application the Property was being managed by the leaseholder of Flats 1 and 3, Mrs Sylvie Legmann, on a temporary basis with a view to The Heathgate Group taking over the management of the Property from 18<sup>th</sup> January 2021. In the interim, The Heathgate Group was providing Mrs Legmann with support.
5. The need for the works was triggered by Mrs Legmann discovering the presence of asbestos in the boiler room, which she arranged for a surveyor to inspect. The surveyor recommended the removal of an asbestos-covered cylinder and all contaminated material, the full decontamination of the boiler room, and the carrying out of certain other less urgent works.
6. In relation to the works considered to be urgent, quotes were sought from three separate contractors, none of whom was connected to the Applicant, to any of the leaseholders or to The Heathgate Group. The results were compared, and questions were raised to ensure that the quotes were on a ‘like for like’ basis. The cheapest quote was chosen. The leaseholders were kept up to date at all times by email.
7. A summary email was sent to leaseholders by The Heathgate Group on 29<sup>th</sup> December 2020 explaining the section 20 consultation process, including the need to apply for dispensation where the statutory consultation requirements are not complied with in full, and detailing

the information provided by Mrs Legmann to leaseholders to date. As part of the summary The Heathgate Group stated that the previous managing agents had misled leaseholders into believing that asbestos was being properly and genuinely monitored.

8. On 19<sup>th</sup> December 2020 the leaseholders of Flats 2 and 5 both approved the recommendation to use ARG Europe to carry out the work, and ARG Europe was subsequently chosen. Mrs Legmann as leaseholder of Flats 1 and 3 had already approved them. The leaseholder of Flat 4 has not responded.
9. As regards the degree of urgency, the professional advice received by Mrs Legmann indicated that the asbestos should be removed as soon as possible. There were also health concerns on the part of the residents, and the chosen contractor was available to start work on 18<sup>th</sup> January 2021.
10. The Applicant's electronic bundle includes a copy of an asbestos survey report dated 12<sup>th</sup> November 2020 from Ayerst Environmental Ltd.

### **Responses from the Respondents**

11. There have been no objections from the Respondents to the application.

### **The relevant legal provisions**

12. Under Section 20(1) of the 1985 Act, in relation to any qualifying works *"the relevant contributions of tenants are limited ... unless the consultation requirements have been either (a) complied with ... or (b) dispensed with ... by ... the appropriate tribunal"*.
13. Under Section 20ZA(1) of the 1985 Act *"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..., the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements"*.

### **Tribunal's analysis**

14. Whilst the Applicant has clearly kept the Respondents informed in relation to this matter, I note that it has not served any formal notices as required by the Service Charges (Consultation Requirements) (England) Regulations 2003 ("**the Regulations**"). Even if, as the Applicant states, the works were urgent it is unclear why the Applicant felt unable even to serve a stage 1 notice as required by the Regulations.

15. However, as is clear from the decision of the Supreme Court in *Daejan Investments Limited v Benson and others (2013) UKSC 14*, the key consideration when considering an application for dispensation is whether the leaseholders have suffered any real prejudice as a result of the failure to comply with the consultation requirements.
16. In this case, there is some evidence to indicate that the works were urgent and the point has not been contradicted by or on behalf of any of the Respondents. Also, and importantly, whilst there has been no formal compliance there has been a significant amount of information provided to leaseholders as well as a continuing dialogue on the issues. In addition, four out of five leaseholders approved the chosen contractor and the other leaseholder did not comment one way or the other.
17. None of the Respondents has raised any objections, and in particular none of them has suggested that there has been any prejudice to leaseholders as a result of the failure to comply with the statutory consultation requirements.
18. The tribunal has a wide discretion as to whether it is reasonable to dispense with the consultation requirements, and on the facts of this case in the light of the points noted above I consider that it is reasonable to dispense with them.
19. As is clear from the decision of the Supreme Court in *Daejan v Benson*, even where minded to grant dispensation it is open to a tribunal to do so subject to conditions, for example where it would be appropriate to impose a condition in order to compensate for any prejudice suffered by leaseholders. However, as noted above, there is no evidence nor any suggestion that the leaseholders have suffered prejudice in this case.
20. Accordingly, I grant unconditional dispensation from compliance with those of the consultation requirements not complied with by the Applicant.
21. For the avoidance of doubt, this determination is confined to the issue of consultation and does not constitute a decision on the reasonableness of the cost of the works.

### **Costs**

22. There have been no cost applications

**Name:** Judge P Korn

**Date:** 16<sup>th</sup> March 2021

## **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.