



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

Case reference : **LON/00AY/LDC/2021/0011P**

Property : **Flats 23-52 Staplefield Close,
London SW2 4AE**

Applicant : **The Mayor and Burgesses of the
London Borough of Lambeth**

Representative : **Homeownership Services**

Respondents : **The leaseholders of the Property as
listed in the application**

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

Tribunal member : **Judge P Korn**

Date of decision : **30th March 2021**

DECISION

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 mains water supply necessitated by a burst to the supply which was leaking into the intake cupboard.
3. The Property is a block of purpose-built residential flats consisting of 29 units, 13 of which are held on long leases. The Applicant is the landlord and the Respondents are the long leaseholders.

Applicant’s case

4. The water supply in question provides water to the whole block. In the Applicant’s submission, the leak into the intake cupboard could have resulted in a severe health and safety issue, as well as a potential slip hazard at the entrance to the block. Delays would also have created a serious risk of loss of water for residents. A temporary fix was not considered possible.
5. Due to the above considerations, the Applicant instructed its contractor (MPS) to carry out and complete the works on an emergency basis. The works were completed on 7th August 2020.
6. The works were carried out under a qualifying long-term agreement which had previously been tendered and does not form part of this application.
7. The Applicant states that it did not send out a section 20 notice to all leaseholders “as there was unfortunately no time for this option”. It then goes on to state that “it is accepted that the Applicant did not strictly comply with the consultation procedures”.

Responses from the Respondents

8. There have been no objections from any of the Respondents to the application.

The relevant legal provisions

9. 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”*.
10. 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

11. The application itself states that it relates to qualifying works **and** a qualifying long-term agreement. However, in its statement of case the Applicant states that the qualifying long-term agreement does not in fact form part of the application. I will therefore proceed on the basis that the application just relates to the qualifying works.
12. Whilst the Applicant states that it did not “strictly” comply with the statutory consultation requirements, it appears from the Applicant’s submissions that it did not comply with them **at all**. This is not ideal, and it seems to me to be at least strongly arguable that – even in a situation such as this one – some element of consultation or information-sharing could have taken place, even if it was not possible or prudent to comply fully with the statutory requirements.
13. 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.
14. In this case, there is strong 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 compliance with the statutory consultation requirements, none of the leaseholders has objected to the application.
15. In addition, none of the Respondents has suggested that there has been any prejudice to leaseholders as a result of the failure to comply with the statutory consultation requirements.
16. 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.

17. 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.
18. Accordingly, I grant unconditional dispensation from compliance with those of the consultation requirements not complied with by the Applicant.
19. 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

20. There have been no cost applications.

Name: Judge P Korn

Date: 30th 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.