



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

**Case reference** : **LON/00AY/LDC/2021/0164P**

**Property** : **Flats 1-3, 24 Flodden Road, London SE5 9LH**

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

**Representative** : **Aleksandr Stepanyan, in-house Litigation Officer**

**Respondents** : **Ms Carmen McCalla and Mr Wayne Stewart, leaseholders of Flat 3**

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

**Tribunal members** : **Judge P Korn  
Miss M Krisko FRICS**

**Date of decision** : **20<sup>th</sup> December 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**.

Initially the matter was set down for a paper determination, but Ms McCalla (one of the Respondents) later requested a face-to-face oral hearing. That request was granted for reasons given in correspondence, but then Ms McCalla later informed the tribunal that she would not be able to attend a hearing. Therefore, the scheduled hearing was cancelled and the matter

proceeded as a paper determination, without an oral hearing. The documents to which we have been referred are in an electronic bundle, the contents of which we 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 the consultation requirements in respect of the qualifying works which are the subject of this application (insofar as the consultation requirements have not already been complied with).

### **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 relate to the remedying of a leak on the mains water supply.
3. The Property comprises 3 flats, only one of which (Flat 3) is held on a long lease.

### **Applicant’s case**

4. The Applicant states that a new relay of the mains supply needed to be carried out to prevent the leak becoming any worse and resulting in a burst. The leak was identified on 22<sup>nd</sup> July 2020 and Thames Water gave the Applicant a two-week deadline to carry out the necessary repairs.
5. On 10<sup>th</sup> August 2020, the Applicant received a quote from its contractor OCO Ltd, with whom it had an existing qualifying long-term agreement, which included a cost breakdown. On 11<sup>th</sup> August 2020 a justification report was produced to justify the need for the works and giving reasons why the works were urgent.
6. The Applicant states that it took all reasonable steps to inform the Respondents of the nature of, and reasons for, the works by providing a shortened consultation period in a letter dated 13<sup>th</sup> August 2020. This shortened consultation allowed 8 days for the Respondents to provide their observations. The Applicant admits that the shortened consultation did not allow sufficient time for it then to respond to observations, but it submits that this was reasonable given the urgency of the situation. In fact, no observations were received at that time, or since.

7. There was some subsequent contact with the Respondents, as Ms McCalla contacted the Applicant by telephone on 4<sup>th</sup> September 2020 asking for a better understanding of the works and asking why she was being asked to pay. On 11<sup>th</sup> September 2020, the Applicant's Major Works Team contacted Ms McCalla and explained that the pipe was under the boundary of the Property and that this was why the Respondents were required to contribute towards the cost of the works as leaseholders. To the Applicant's knowledge, there has been no further contact from the Respondents.
8. The Applicant argues that there is no evidence of the Respondents having suffered any prejudice as a result of the failure fully to comply with the statutory consultation requirements and that in any event this failure was justified by the urgent nature of the works.
9. Accordingly, the Applicant seeks dispensation from compliance with those of the statutory consultation requirements with which it has failed to comply.

### **Responses from the Respondents**

10. There have been no written submissions from the Respondents objecting to the application. Whilst the Respondents initially requested a hearing, there is also no evidence that they oppose the application (or as to the grounds on which any such opposition might be based).

### **The relevant legal provisions**

11. 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*".
12. 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**

13. We note that the Applicant has complied with some, but not all, of the statutory consultation requirements. As is clear from the decision of the Supreme Court in *Daejan Investments Limited v Benson and others (2013) UKSC 14*, the key issue 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. There is evidence to indicate that the works were urgent, as Thames Water gave the Applicant a two-week deadline to carry out the necessary repairs. In addition, the Applicant did at least begin the statutory consultation process and therefore arguably did all that it reasonably could within the time available. The Applicant's submissions have not been contradicted by the Respondents and, importantly, the Respondents have not objected to this application.
15. In addition, the Respondents have not suggested that they have suffered any prejudice as a result of the failure fully 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 – including the urgency of the situation and the fact that there was some consultation – we consider that it is reasonable to dispense with the consultation requirements.
17. As is clear from the decision of the Supreme Court in *Daejan v Benson*, even when 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, we grant unconditional dispensation from compliance with the consultation requirements.
19. However, it should be noted that this determination is confined to the issue of consultation and does not constitute a decision on the reasonableness of the cost of the works. Therefore, if the Respondents do have concerns about the extent of their liability to pay towards the cost of the works it is open to them to make a separate application to the tribunal to determine the reasonableness of the cost.

### **Costs**

20. There have been no cost applications.

**Name:** Judge P Korn

**Date:** 20<sup>th</sup> December 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.