FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LDC/2020/0239P**
Property	**:**	**300 Vauxhall Bridge Road, London SW1V 1AA**
Applicant	**:**	**Vega Holdco 1 Limited**
Respondents	**:**	**Various leaseholders as per the application**
Type of application	**:**	**To dispense with the requirement to consult leaseholders about major works**
Tribunal members	**:**	**Judge P Korn** **Mr P Roberts DipArch RIBA**
Date of decision	**:**	**23rd February 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 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 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 repair works to the flank wall separating the Property from 292 Vauxhall Bridge Road ("**the Adjoining Property**"). The works commenced on 24th August 2020.

3. The Applicant is the freehold owner of the Property, which comprises 40 flats across 9 floors and a ground floor shop. The Respondents are the long leaseholders of the flats.

Applicant's case

4. Certain demolition works took place at the Adjoining Property, and these works exposed the flank wall of the Property. John F Hunt Ltd ("**JFH**"), the contractor carrying out the works at the Adjoining Property, investigated the exposed wall and produced a document (including photographs) outlining the problems with the flank wall that they had identified. They also informed the structural surveyor involved in the works (Meinhardt), the project manager (Rusupo) and the party wall surveyor (Anstey Horne). JFH's finding was that the flank wall was not adequately finished and expressed concern that the exposed wall appeared not to be tied into the surrounding structure and that long-term stability was not guaranteed.

5. On 17th July 2020 the exposed wall was inspected by Greens Structural Engineering Ltd ("**Greens**"), who were involved in the party wall agreement and were independent to the works being carried out on the Adjoining Property. On 24th July 2020 Meinhardt and Greens met on site to discuss the issues. As a result of these (and possibly other) investigations the Applicant was advised that urgent works were required as the flank wall posed a health and safety risk to residents at the Property and to workers and residents at the Adjoining Property.

6. Specifically, the Applicant was advised that the health and safety risks were due to the wind loading on the exposed structure which was compromising the structural integrity of the wall. This had created a risk of the wall breaking off and falling on to the Adjoining Property.

7. Meinhardt then produced some information concerning a possible temporary solution involving the construction of wind posts to be tied back to the existing slab level. Greens then reviewed Meinhardt's proposal, having been appointed independently by the Applicant to do so, and Greens endorsed Meinhardt's solution, stating that the proposed works seemed logical and reasonable. Greens also strongly recommended that this solution be adopted as soon as possible to reduce the risk of any section of wall falling.

8. Tim Brock of Route One (the other party wall surveyor) stated that the issue with the flank wall had not been caused by the demolition works but that the issue was simply that it had not been built to a standard that would allow it to be exposed. Robert Schwier of FirstPort Property Services Limited, the Applicant's managing agents, expressed the view that the remedial works could only be carried out via the Adjoining Property, which gave the Applicant a limited window in which to act if it did not want to risk becoming liable in damages for delays to the works to the Adjoining Property.

9. The Respondents were informed of the intention to carry out the works to the flank wall without going through a full statutory consultation process. The Applicant provided them with details of the proposed works, quotes and an overall cost estimate. It also answered the Respondents' various queries.

10. Before the works commenced the Applicant obtained two quotes. It states that, due to the urgent nature of the works, it was unable to obtain further quotes. There was a quote for £85,000 + VAT from Lynx Response and a quote for £75,000 + VAT from JFH (on the basis that they would be doing the work with Meinhardt and Anstey Horne). The Applicant chose the latter quote as it was lower and as JFH could do the works quickly. It was made clear at the time that JFH's quote was just an estimate as it was difficult to be exact given the nature of the works and as the floors below the 7th floor had not yet been exposed.

11. After the commencement of the works, further issues with the wall were discovered at different levels and further remedial works became necessary. These further works resulted in additional costs of £8,722.00.

12. The Applicant submits that the Respondents have suffered no prejudice as a result of the lack of formal consultation. It has also referred the tribunal to the decision of the Supreme Court in *Daejan Investments Limited v Benson and others (2013) UKSC 14*.

Responses from the Respondents

13. There have been two submissions from Respondents who are opposed to the application.

14. Mr Victor Douse is the leaseholder of Flat 396, and he has raised a number of different arguments. First of all, he states that the first notification of any sort to leaseholders was a letter dated 12th August 2020 but that the Applicant knew

about the problem as early as 20th July 2020. Furthermore, the 12th August letter presented the Applicant's decision to instruct JFH as a 'fait accompli' and included a demand for immediate payment. In addition, the letter did not give the leaseholders enough information to be able to form a considered view, and Mr Douse expresses concerns about the fact that part of an email from Tim Brock, on which the Applicant was relying to justify the urgency, had been redacted.

15. Secondly, Mr Douse contends that the Applicant was deficient in failing to obtain the best possible estimate and in only obtaining two estimates. He refers to there being an unexplained admin fee of 5% on top of the original quotes and takes issue with the brief nature of the information contained in the estimates. He also comments on the £8,722.00 uplift referred to in the Applicant's statement of case.

16. Thirdly, he states that if the leaseholders had been given more information they could have made representations to persuade the demolition firm and/or the developer of the Adjoining Property to carry out the necessary works at cost rather than at a profit. The rationale for his contention on this point is that the flank wall was only exposed because of the works to the Adjoining Property, the leaseholders of the Property have suffered disturbance as a result of the works to the Adjoining Property, and the demolition firm should not in his view make a second profit.

17. Fourthly, Mr Douse argues that the Applicant exaggerated the urgency of the situation as leaseholders were told that the works to the Adjoining Property could not continue until the flank wall was rendered safe, but in fact works continued. When this contradiction was highlighted by a leaseholder the Applicant's managing agents waited 3 weeks before replying that the works were actually being carried out to a separate section of the building not near to the Property. However, this does not seem compatible with the fact that the works taking place at that point were causing the Property to shake. Furthermore, it contradicts the developer's own claim that there was no meaningful demolition work available whilst it waited for the flank wall to be rendered safe.

18. Mr Douse also objects to the demand for a greatly increased service charge payment for the year to 25th December 2020 to replenish the reserve fund which was to be emptied to pay for these works. He also refers to past problems which have caused him to be less trusting of the behaviour and attitude of the Applicant.

19. Mr Robert Edwards is the leaseholder of Flat 385, and he has made submissions on behalf of himself and 26 other leaseholders listed by him. His submissions are, in substance, the same as those of Mr Douse.

Follow-up submissions from Applicant

20. The Applicant argues that it has had regard to the Respondents' observations as required by the legislation. As regards the period between the date on which the Applicant first knew about the issue and the date on which it communicated with leaseholders, this was spent reviewing the circumstances surrounding the issue, including ensuring that the works were urgent and obtaining two quotes. The Applicant also argues that at no stage have the Respondents provided evidence to show that the two quotes obtained were unreasonable.

21. As regards the 5% admin fee, the Applicant contends that it is standard practice for a fee of this nature to be added to cover administration issues.

The relevant legal provisions

22. 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"*.

23. 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

24. It is worth first noting that this case was set down for a decision on the basis of the papers alone, without an oral hearing. Whilst we are satisfied that to proceed without an oral hearing has been reasonable and proportionate in the circumstances, it necessarily follows that the parties' respective submissions have not been tested by cross-examination. The decision is therefore made on the basis of the written submissions alone.

25. Those of the Respondents who oppose the application have based their opposition on a number of different points, some more relevant than others. For example, whilst the background information that they have supplied may provide context for the evident lack of trust it is hard to argue that it is relevant to the question of whether to grant dispensation from compliance with the consultation requirements in the specific circumstances of the works to the flank wall. In addition, some of the cost-related issues raised by the Respondents may be more relevant to reasonableness and payability under sections 19 and 27A of the 1985 Act than to dispensation under section 20ZA.

26. On the basis of the written submissions before us, we are satisfied that the Applicant was justified in treating the works as urgent. The Applicant's evidence is that JFH identified the initial problems and then produced a report with photographs and a conclusion. Greens, who the evidence indicates were completely independent, inspected the wall and then met with Meinhardt on

site to discuss the issues. The resulting advice to the Applicant, with which none of the experts seemed to disagree, was that the works needed to be carried out urgently as the flank wall posed a health and safety risk to residents at the Property and to workers and residents at the Adjoining Property.

27. The Applicant also states that Meinhardt's proposed solution to the problem was approved by Greens, that having assessed the expert evidence the Applicant's managing agents concluded that the works had to be carried out via the Adjoining Property, and that therefore the Applicant had a limited window in which to act if it did not want to risk becoming liable in damages for delays to the works to the Adjoining Property.

28. As regards the Respondents' objection that there was a gap between the Applicant first knowing about the problem and writing to leaseholders, we consider this to be misconceived. It was, in our view, appropriate for the Applicant first to make an assessment with the assistance of relevant experts in order to be in a position to understand the level of urgency and thereafter to explain the issues to leaseholders in the context of the level of urgency. It would only have been apparent once the level of urgency was determined to what extent (if at all) the Applicant would be able to go through the statutory consultation process.

29. The Respondents who oppose the application are clearly sceptical as to the degree of urgency, but the Applicant has provided persuasive evidence that the works were urgent and the Respondents have not provided any tangible evidence to counter this. They question why part of an email was redacted, but this is not a sufficient basis on which to challenge the expert advice on which the Applicant relied. They also point to apparent contradictions in correspondence as to whether works were continuing on the Adjoining Property and, if so, on which part of the Adjoining Property. It is possible that this point could have been pursued further at an oral hearing, but on the basis of the information before us it is not sufficient to counter the expert evidence that has been provided as to the urgency of the works.

30. The objection that the decision to instruct JFH was presented as a 'fait accompli' is only valid if it can be shown that the Applicant was not justified in proceeding at that speed and without going through a fuller consultation process, but in our view the Respondents have failed to show this.

31. As regards the objections to the estimates themselves, although we appreciate the difficulty of doing so the Respondents have not provided any evidence to show that the works could have been carried out urgently, competently and more cheaply by an alternative contractor. As regards the fact that the Applicant only obtained two quotes, whilst we consider that it would have been better to obtain three quotes we accept on the basis of the information before us that the situation was urgent and that it is possible (although not certain) that it would hsve been difficult to source a third quote.

32. As regards the questions about the 5% administrative fee and the uplift in the cost of the works, the Applicant has provided an explanation on these points but in any event in our view they are not directly relevant to the issue of dispensation. It is possible that these points, and others, would be relevant to the question of the overall reasonableness and payability of the service charge cost of these works, but to challenge the service charge cost on this basis would require a separate application under section 27A of the 1985 Act. On the question of whether the Adjoining Owner's contractor could have been persuaded to carry out the work on a non-profit basis, there is no evidence before us to suggest that this was a credible option.

33. 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 we consider that it is reasonable to dispense with them. We accept that the works were sufficiently urgent for health and safety reasons such that it was prudent for the Applicant to proceed with them as quickly as it did, thereby not being able to conduct a full statutory consultation. In the time available to the Applicant, it obtained more than one source of expert advice and two estimates, it explained the position to leaseholders (albeit accompanied by a demand for payment) and responded in writing to the leaseholders' various observations. There is no evidence that the Applicant failed to have regard to those observations.

34. As is clear from the decision of the Supreme Court in *Daejan v Benson*, even where minded to grant dispensation it is open to the 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.

35. It should be noted, though, that *Daejan v Benson* was not a case involving emergency works. In circumstances where works do not need to be carried out as an emergency there is, in principle, no excuse for failure to comply with the full statutory consultation requirements, albeit that certain breaches may in practice be more understandable than others.

36. It is apparent from the decision in *Daejan v Benson* that even where works are not urgent and there is a breach of the consultation requirements it is still possible to grant dispensation and even to grant unconditional dispensation. A key issue for the Supreme Court was whether, and if so to what extent, the failure fully to consult had resulted in real prejudice to leaseholders. The Supreme Court then went on to make it clear that even if there was real prejudice it was still possible in appropriate circumstances to deal with that prejudice by way of compensation or other condition rather than simply to refuse to grant dispensation.

37. In the present case, it seems to us that there are two separate strands to the question of whether the leaseholders have suffered real prejudice. First of all, one of our factual findings is that this was a case of emergency works and in our view the question of 'prejudice' needs to be seen in this context. If, for example,

a building was collapsing and the landlord took immediate steps to remedy the problem it surely cannot be the case that the landlord should be penalised for the consequences of its failure to go through a full, formal consultation process. The likelihood is that the leaseholders would be far more prejudiced by a decision to delay such urgent works by engaging in full consultation, and therefore the decision not to consult fully would have lessened the scope for prejudice. Furthermore, as noted above, a decision to grant unconditional dispensation does not preclude the leaseholders from challenging the reasonableness of the cost itself by means of a section 27A application.

38. Secondly, the Respondents have not provided any persuasive evidence of actual prejudice, especially given that it is still open to them to make a later section 27A application if they wish. This is not meant as a criticism of the Respondents; it is merely to make the point that we are not persuaded that prejudice has been demonstrated in a quantifiable way or at all.

39. Accordingly, we grant unconditional dispensation from compliance with those of the consultation requirements not complied with by the Applicant.

40. 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

41. Certain of the Respondents have made a cost application under section 20C of the 1985 Act. We agree with the Applicant that it would be best to deal with this cost application following the handing down of our decision on the substantive issues upon receipt of written submissions.

42. Accordingly, those Respondents who wish to make a section 20C cost application must send written submissions to the tribunal in support of that cost application (or amend or confirm any existing written submissions) by email **within 14 days** after the date of this decision, with a copy to the Applicant. If the Applicant wishes to oppose any such cost application(s) it may send written submissions in response to the tribunal by email **within 28 days** after the date of this decision, with a copy to the relevant Respondents.

Name: Judge P Korn **Date:** 23rd February 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).