



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

Case reference : **LON/00BJ/LDC/2022/0071P**

Property : **Osborne House, 414 Wimbledon
Park Road, London SW19 6PW**

Applicant : **Osborne House (SW19) RTM
Company Ltd**

Representative : **Eszter Varszegi of JCF Property
Management Ltd, the Applicant's
managing agents**

Respondents : **The leaseholders of the Property**

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

Tribunal member : **Judge P Korn**

Date of decision : **11 July 2022**

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 two electronic bundles, 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 the consultation requirements 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 are certain works to all 3 passenger lifts, including asbestos removal.
3. The Property comprises three purpose-built linked blocks of 32 flats in total.

Applicant’s case

4. The Applicant’s managing agents state that a section 20 consultation was carried out for planned lift works and for replacing the main electrics for all three lifts at Osborne House. Previous asbestos reports, including for the lift shafts, were available but (presumably due to an oversight) the lift motor room had not been inspected for asbestos. The lift consultant provided all of the available reports to the lift company, whereupon the lift company asked for a report in relation to the lift motor room(s). Crystallised asbestos was then found in the lift motor room(s) and in the adjoining water tank room, with loose asbestos fibre debris on the floor. The lift company advised that the asbestos needed to be moved before it could safely access these areas.
5. On 5 April 2022, a detailed letter was sent to all leaseholders about the unforeseen issues with the asbestos, including copies of all three asbestos removal estimates that had been received. These estimates had not been included in the original notice of intention as the asbestos was not known about at that time. The leaseholders were then informed that the Applicant intended to apply for dispensation from the obligation to restart the section 20 process so as to take account of the extra cost of the asbestos removal, and leaseholders were later invited to make comments on the dispensation application.
6. The Applicant states in its application that if the consultation process had been restarted there would have been a delay which would have increased the cost of the works. The original start date was 28 March 2022 but the intention was to delay the start date until 3 May 2022. If the Applicant had restarted the consultation process the works would not have been able to commence before late June 2022 at the earliest.

The Applicant had been advised by the proposed lift company that it would only have been able to freeze its costs up to 3 May 2022 and that if the works had not commenced until after that date the cost could have increased substantially.

7. The hearing bundles include copy correspondence with leaseholders.

Responses from the Respondents

8. The hearing bundles contain no submissions from the Respondents objecting to the application, and I take this as confirmation from the Applicant and its managing agents that there have been no objections to the dispensation 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 Applicant states (or at least implies) that it complied fully with the section 20 consultation requirements in relation to the original scope of works, and none of the Respondents has disputed this. The problem arose when asbestos was discovered before the works began, resulting in an expansion of the nature and cost of the works required. As to the reason for not wanting to go through a further consultation, whilst there appears to have been an element of urgency in carrying out the works in order for occupiers to have the use of functioning lifts, the stated basis for the application for dispensation is that to delay commencement of the work beyond a certain date would have increased the cost substantially.
12. 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 prejudice as a result of the failure to comply with the consultation requirements.

13. In this case, none of the Respondents has expressed any objections in relation to the failure to go through the statutory consultation process, and there is no evidence before me that the leaseholders were in practice prejudiced by the failure to consult. Furthermore, the uncontested evidence before me is that a delay to the works would have led to those works becoming substantially more expensive.
14. 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 the consultation requirements.
15. 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 specific prejudice suffered by leaseholders. However, as noted above, there is no evidence nor any suggestion that the leaseholders have suffered prejudice in this case.
16. Accordingly, I grant unconditional dispensation from compliance with the consultation requirements.
17. 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.

Costs

18. There have been no cost applications.

Name: Judge P Korn

Date: 11 July 2022

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.