

12003



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

Case Reference : **LON/00AR/LDC/2017/0014**

Properties : **2 and 3 Portmore Gardens, 7
Sherborne Gardens and 5 Wensley
Close, Romford, London, RM5**

Applicant : **London Borough of Havering**

Representative :

Respondents : **Stone Properties (Chigwell) Ltd
Mrs J Rhodes
Mr C & Mrs P Vant
Mr & Mrs Ayres**

Representative :

Type of Application : **To dispense with the statutory
consultation requirements**

Tribunal Members : **Mrs H Bowers – Valuer Chair
Mr H Geddes - Professional
Member**

**Date and venue of
Consideration** : **15 March 2017, 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **15 March 2017**

DECISION

The Tribunal grants the application for dispensation from further statutory consultation in respect of the subject works. For clarity the works are the installation of external wall insulation.

REASONS

The Application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the Act") dispensing with statutory consultation in respect of major works.
2. This application is in relation to four residential units, namely 2 and 3 Portmore Gardens, 7 Sherborne Gardens and 5 Wensley Close, Romford, London. They are described as low level, purpose built flat blocks of 'Cornish' design. The Applicant, the London Borough of Havering is the landlord of these properties and the Respondents are the leaseholders of the four residential units.
3. The application is dated 5 January 2017. Directions were issued by the Tribunal on 16 February 2017. The Directions initially listed the matter for a paper determination for the week commencing 13 March 2017, unless any party made a request for a hearing. There was no request for a hearing and therefore the Tribunal considered this case on the papers submitted to it on 15 March 2017.
4. The application seeks dispensation in respect of the application of External Wall Insulation (EWI) to Cornish type non-traditional blocks that are recognized within the Defects Act 1984. It was explained that the work was due to start in January 2017 and the blocks were identified as requiring urgent insulation works. The installation of EWI is described as being specialist work, requiring the use of a supplier-accredited workforce. The contractors, Willmott Dixon Energy Services (now trading as Fortem), are stated to be familiar with the Applicant's housing stock and its expectations in respect of cost savings, design and workmanship. As such the Applicant would like to procure the work through this contractor. It is stated that the Applicant wishes to ensure that the project is value for money for the leaseholders and that the work is procured through the Green Service Hub, which is a framework managed by Places for People. The reason for the urgency is that the deadline for placing new orders under the framework is April 2017. However, to take advantage of the contractor's spare capacity the Applicant would like to place its order in early 2017.
5. No formal consultation was undertaken but the Applicant had written to all the Respondents copying all the application documents on 20 February 2017. This letter set out the background to the application and the situation in respect of the preferred contractor, Fortem. Included in the Tribunal's bundle is the framework appointment with Places for People Group Limited in relation to the procurement to the Green Service Hub. This document

identified that the preferred contractor had met all the minimum pre-qualification standards and had received 39 pre-qualification questionnaires and had a score of 80.15. There was also a Project Information Pack that gave a detailed specification and installation guide in respect of the proposed EWI system. Additionally the contracts had been advertised in the OJEU and the preferred contractor had secured the contract through competitive tender.

6. The Directions invited any Respondent/leaseholder who opposed the application to submit a response form to the Tribunal and to make any statement of response to the Applicant/landlord by 8 March 2017. There was a response received from Mrs J Foo (previously Mrs Rhoads), the leaseholder of 3, Portmore Gardens. The response a pro-forma document indicating that she had no objections to the work and a letter sent to the Applicant. The letter stated that her concerns were not in respect of the company selected to undertake the work. Her concerns related to the reduced space between the fencing and walls that may restrict the movement of furniture and appliances in and out of her property; the movement between the seasons and that a brick solution would be a better option; that the work will not add value to her property and that with annual energy cost savings of £300 per annum this would take a period of 33 years for full recovery against the cost of the works.

Determination

7. Section 20ZA(1) of the Act provides:

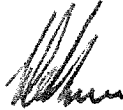
“Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

8. The Tribunal has taken account the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14.

9. As mentioned above there has been engagement from Mrs Foo, but none of her comments suggested that the works ought to have been the subject of full statutory consultation. Nor did she indicate that she had suffered any prejudice in respect of the lack of consultation.

10. The description of the very specific EWI solution associated with the design of the relevant properties, the use of a supplier-accredited workforce and the need to instruct the preferred contractor before April 2017 is sufficient evidence that the subject works were of an urgent nature. The Tribunal accepts the Applicant’s submission that the works were of an urgent nature. Additionally, it is noted that there have been no substantive objections to the application for dispensation from the leaseholders, other than the practical problems identified by Mrs Foo. In all the circumstances the Tribunal grants the application for dispensation from statutory consultation in respect of the subject works, considering it reasonable to do so. For clarity the works are the installation of external wall insulation.

11. This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonable cost of the work.



Name: H C Bowers

Date: 15 March 2017

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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