FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AC/LDC/2019/0076**
Property	**:**	**Western Mansions, Great North Road, New Barnet, Herts EN5 1AE**
Applicant	**:**	**Rigbyward Ltd**
Respondents	**:**	**The leaseholders of the Property as per the application**
Type of application	**:**	**To dispense with the requirement to consult leaseholders about major works**
Tribunal member	**:**	**Judge P Korn** **Mr P Roberts DipArch RIBA**
Date of decision	**:**	**8th July 2019**

DECISION

Decision of the tribunal

(1) The tribunal dispenses with the consultation requirements in respect of the qualifying works which are the subject of this application, to the extent that those consultation requirements have not been complied with.

(2) As a condition of the dispensation, the Applicant is not to pass on to the leaseholders any costs incurred by it in connection with the making of its application for dispensation, whether through the service charge or otherwise.

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, insofar as those requirements have not already been complied with.

2. The Property is a purpose-built block of 30 flats.

3. The application concerns qualifying works which have already been started. The works comprise cyclical internal repair and decorations.

Paper determination

4. In its application the Applicant stated that it would be content with a paper determination. In its directions the tribunal stated that it would deal with the case on the basis of the papers alone (i.e. without an oral hearing) unless any party requested an oral hearing. No party has requested an oral hearing and therefore this matter is being dealt with on the papers alone.

Applicant's case

5. The Applicant served a notice of intention on the leaseholders on 30th November 2018. The notice notified leaseholders of the Applicant's intention to carry out internal repairs to, and redecoration of, the communal areas. The notice gave leaseholders until 7th January 2019 to raise observations in relation to the proposed works and to nominate a contractor. No observations or nominations were received in response to the notice of intention, save that the leaseholder of Flat 3 requested – and was supplied with – a copy of the schedule of works.

6. The independent building surveyor instructed to draw up the specification of works then put the specification out to tender and

reported back with a tender analysis report and a recommendation to proceed with the cheapest quote. At this point a second stage consultation notice should have been served on leaseholders but the Applicant's managing agents failed to serve it and instead they wrongly instructed the contractor to proceed with the works.

7. The mistake was later realised and the contractor was instructed to stop work. A letter was sent to leaseholders explaining what had gone wrong and including a copy of the statement of estimates by way of belated implementation of the second stage of consultation. No observations were received from leaseholders by the expiry of the second stage consultation period.

8. Some leaseholders have made submissions in response to the application for dispensation, but the Applicant submits that they have not met the test set out in the decision of the Supreme Court in *Daejan Investments Limited v Benson and others (2013) UKSC 14* as they have failed to identify any relevant prejudice suffered by them.

Responses from the Respondents

9. The leaseholder of Flat 11 states that there should be a reduction in the service charges but he does not explain the basis on which it would be appropriate to make a reduction beyond labelling the error made by the Applicant's managing agents as 'mis-management'. He also expresses concern that the work has not been staggered so as to reduce the immediate financial impact.

10. The leaseholder of Flat 8 states that the notice of intention was never received, but in response the managing agents state that a copy was posted to Flat 8, that being the address for correspondence on their file. The leaseholder of Flat 8 also asserts that the managing agents have acted unreasonably and states *"I look forward to your proposed compensation plan or settlement"*.

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 decision

13. This is not a case of a landlord requesting dispensation from going through a full consultation process for reasons of urgency. The works are not required to remedy a dangerous situation or to fix an essential service. The need for dispensation arises solely out of an error made by the Applicant's managing agents in that they authorised the commencement of the works before completing the consultation process.

14. We accept, on the basis of the evidence provided, that the error was inadvertent. We also note that the Applicant carried out the first stage of consultation and then later – after discovering the error – carried out the second stage of consultation and that it received no observations from leaseholders during the statutory consultation period. The Applicant states that the contractor who was selected was the contractor who provided the lowest quote, and there is no evidence before us to contradict this statement.

15. As the Applicant rightly notes, the decision in *Daejan v Benson* is authority for the proposition that leaseholders need to identify some relevant prejudice which they have suffered, or may have suffered, as a result of the failure fully to comply with the consultation requirements. The written submissions from leaseholders do not address this key issue.

16. It may well be that the leaseholders who have raised objections are unclear about the distinction between (a) whether compliance with the consultation requirements should be dispensed with and (b) whether the service charges themselves are reasonable. These are two separate subjects and we will comment briefly in paragraph 18 below on the issue of the reasonableness of the service charges themselves.

17. Before commenting further on the service charges themselves, the first and main thing for us to do is to deal with the application before us. On the basis of the evidence before us and as noted above, we do not consider that the leaseholders have been prejudiced by the failure fully to consult, and therefore we are satisfied that it is reasonable to dispense with the formal consultation requirements to the extent hat they have not been complied with. This is subject to the condition contained in paragraph 19 below.

18. This determination is confined to the issue of consultation and **does not constitute a decision on the reasonableness of the cost of the works**. If the leaseholders consider that the cost of the works is unreasonable then in principle it is open to them to make a separate application to this tribunal for a determination as to the reasonableness or otherwise of the cost itself. However, if any leaseholders are considering taking such a course of action it would be wise for them to

obtain some independent advice before doing so. As for the Applicant, it may wish to consider what steps it should take to try to ensure that the total cost of the works does not exceed the amount that it would have been if this error had not occurred.

Costs

19. No cost applications have been made. However, the Applicant has confirmed that it has no intention of passing on to leaseholders its costs incurred in making this application. We agree that these costs should not be passed on and we hereby make it a condition of the grant of dispensation that these costs are not passed on to the leaseholders, whether through the service charge or otherwise.

Name: Judge P Korn **Date:** 4th July 2019

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.