



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

Case reference : **LON/00BJ/LDC/2019/0014**

Property : **545 Old York Road, London SW18
1TQ**

Applicant : **545 Old York Road Management
Limited**

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 members : **Judge P Korn
Mr P Roberts Dip Arch, RIBA**

Date of decision : **25th February 2019**

DECISION

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 Property is a block containing four flats and one commercial unit.
3. The application concerns qualifying works which are yet to be carried out. The works comprise the replacement of a foul water pump.

Paper determination

4. In its application the Applicant stated that it would be content with a paper determination if the tribunal considered it appropriate. 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) but noted that any party had the right to request 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. Following a recent attendance at the Property by the buildings pump engineer to a high-level water alarm call-out, the pump company informed the Applicant’s managing agents that one of the foul water pumps had failed and that a full tanker and jetter service was necessary to clear the chamber and to replace the pump. There are two pumps in total; one has failed completely and the remaining life span of the other cannot be guaranteed.
6. A quote has been obtained either for the full tanker and jetter service plus replacement of both foul water pumps and associated parts. A lower quote has been obtained for the replacement of just one pump.
7. An email to all leaseholders has been sent out containing the report and quote from the contractor, also making it clear that the cost is above the consultation threshold and that due to the urgency an application for dispensation would be made.

8. As regards the level of urgency, the tenants in one flat are becoming increasingly distressed and worried about their welfare. After the contractor call-out the tenants' bedroom became filled with flies and a very bad sewage smell, and they feel that the flat is uninhabitable. The risk of the high foul water levels and of the potential failure of the whole system poses a threat to health and safety and could leave residents without basic sanitary requirements. In addition, failure to take urgent action could increase repair costs.

Responses from the Respondents

9. None of the Respondents has written to the tribunal to oppose the application.

The relevant legal provisions

10. 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”*.
11. 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

12. On the basis of the information provided, we are satisfied that the works need to be carried out relatively urgently due to the risk of the other foul water pump failing and due to the distress already being caused by the current state of part of the Property and the risk of further damage occurring. We are therefore satisfied that it would be reasonable to carry out the repairs without first going through the statutory consultation process in the circumstances. We also note that leaseholders have been given some information and explanation and that none of the leaseholders has opposed the application.
13. Therefore, we are satisfied that it is reasonable to dispense with the formal consultation requirements in respect of the qualifying works which are the subject of this application. In the absence of any evidence that the Respondents have been prejudiced by the failure to consult, the dispensation is unconditional.
14. For the avoidance of doubt, this determination is confined to the issue of consultation and **in particular does not constitute a decision on the reasonableness of the cost of the works.**

Costs

15. No cost applications have been made.

Name: Judge P Korn

Date: 25th February 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.